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NOVEMBER MEETING, 1900.

THE stated meeting was held on Thursday, the 8th instant, at three o'clock, P. M. ; the President in the chair.

After the reading of the record of the last meeting and of the list of donors to the Library, the PRESIDENT announced the appointment of Rev. Dr. Alexander McKenzie to write the memoir of the late Edwards A. Park ; Mr. William S. Appleton to write the memoir of the late William H. Whitmore ; Mr. Henry W. Haynes, the memoir of the late Mellen Chamberlain ; and Mr. A. Lawrence Lowell the memoir of the late Augustus Lowell.

The PRESIDENT communicated, in behalf of the Hon. OLIVER WENDELL HOLMES, who was not present, a memoir of the late George O. Shattuck, the preparation of which had been assigned to him after the death of the late Charles F. Dunbar, who had been originally appointed to write it.

Mr. Worthington C. Ford, of Boston, was elected a Resident Member.

The TREASURER made a brief statement with regard to an agreement in relation to the set-back of the Society's new building on the Fenway and the Boylston Entrance, and offered the following vote, which was adopted :—

Voted, That the Treasurer of the Society be, and he is hereby, authorized, with the approval of the Council, to sign, seal with the corporate seal, acknowledge, and deliver, in the name and behalf of the Society, an agreement with the City of Boston to hold so much of the land of the Society as adjoins the Fenway and the Boylston Entrance, and is included within the lines of lot numbered five, on a plan made by Wm. H. Whitney, dated June 1, 1888, and recorded with Suffolk Deeds at the end of Book 2032, subject to restrictions substantially similar to those imposed upon the adjoining land of the Society abutting upon the Fenway, but requiring the setting back of buildings to a distance of not more than fifteen feet from Boylston Entrance and twenty feet from the Fenway.

He also made the usual statement with regard to the appropriation of the Income of the Massachusetts Historical Trust Fund; and on his motion it was

Voted, That the Income of the Massachusetts Historical Trust Fund for the current year be appropriated toward the publication of the Society's Collections.

Mr. JOSIAH P. QUINCY presented to the Society the diary of a journey made by his grandfather, Josiah Quincy, at the beginning of the year 1829. This was undertaken with the view of finding out what he might of the methods and aims of college education as it then existed in America. Incidentally the traveller met many interesting public characters who have long passed off the stage. This diary was unknown to Edmund Quincy when he wrote the life of his father, it having been found among some papers at a subsequent period.

Mr. Quincy said that it had been his fortune to read several manuscript diaries, one or two of them extending over the greater part of a lifetime, and he had come to the conclusion that the average diary — although of undoubted psychological interest as picturing the varying moods of the writer — must be cautiously used as material for history. It is difficult to eliminate the subjective element which is more or less pushed to the front in these compositions. Their writers believe that they are simply narrating events without, when in fact they are unduly mixing them with sensations within. In reading diaries that have extended over many years, he was struck with the lack of permanence in the personalities of their writers; as time went on, one personality seemed to disintegrate and give place to another. He had also noted that the average diarist seldom gives the events he witnesses in what to a later time seems their true proportion. Even in the most interesting and, from an historical point of view, the most important American diary yet given to the public — that of John Quincy Adams — there is occasionally something to be desired in what may be called the incidence of observation. And if this is admitted to be true in the case of a writer so fully equipped and wide awake, it suggests that in the average diarist — who may be neither well equipped nor wide awake — the defect can easily amount to a positive distortion of outlook. After all, the crowning value of the Adams diary is

the picture of the noble public character that it incidentally and unconsciously presents. The writer has really done what Rousseau undertook to do, and failed to do : he has given the reader an estimate of what he was that the Recording Angel might confidently adopt should any accident happen to his books.

Mr. JAMES F. RHODES read the following paper : —

Some Recent Impressions of England.

A satisfaction in travelling abroad is to receive and recount the impressions one gets of the people of foreign lands, of their political and social affairs. Such impressions from brief visits must be superficial, but a mass of them obtained from many points of view cannot be otherwise than helpful to him who desires to make a serious study of any foreign country. England is to us the most interesting country, the easiest to understand, the one from which we may learn the most. It is a study never exhausted. Her strength and her weaknesses as they may be variously considered appeal to us all. The study is profitable in many respects as an example ; in others it may serve as a warning. I always like to quote the bold generalizations of Muirhead, the British author of Baedeker's Guide Book to the United States : " In domestic and social morality the Americans are ahead of us, in commercial morality rather behind than before, and in political morality distinctly behind." It seems to me that he is right in regard to social and political morality, but I am convinced, after a long consideration of the subject, that if there be any difference in commercial morality, the balance will be in favor of the United States.

It is a firm belief that the differences between England and the United States are largely superficial ; that in the important essentials of character the resemblances between the English and those of English descent in the United States are great, — fully as great as one would from *a priori* reasoning imagine them to be. There are superficial differences arising from the circumstance that although England is a democracy theoretically, she is not one practically. Reason all you will from the wide extension of suffrage, and the large number of voters, the doctrine of the equality of mankind is far from

being accepted. The native American is imbued with the idea that one man is as good as another. He may restrict this to white persons born in the United States, but with that restriction the idea becomes in practice that every one is entitled to an equal chance in the game of life. Such a notion has not pervaded England. I am told, for instance, that it is rarely the case that a son of a laborer ever goes to Oxford or Cambridge, and if one does happen to get there he is made to feel his condition in a hundred ways acutely painful to a sensitive nature.

The deference of the lower classes to those above them strikes the American with the first men that he meets in England. A shilling to the railway porter, another to the guard which is a payment for service rendered, gives you a smile and a doffing of the cap that is well worth double the money. If you are fortunate to stop at a hotel which has not imported French or German waiters, where you are served by one of the old-time English servants, your satisfaction at his bows, at his constant use of "sir," at his deferential manner as he provides for your wants, is evident as you call to mind the independent manner in which you have sometimes been served in America. We have all met the counterpart of the waiter John Hay tells about. "I knew a gentleman in the West," Hay writes, "whose circumstances had forced him to become a waiter in a backwoods restaurant. He bore a deadly grudge at the profession that kept him from starving, and asserted his unconquerable nobility of soul by scowling at his customers and swearing at the viands he dispensed. I remember the deep sense of wrong with which he would growl 'Two buckwheats begawd.'" The obsequiousness of the barber and the shop-keeper strikes you painfully. The American barber is the aristocrat of the profession. He seems to feel that he is one of the succession of the great barbers of romance or history, — of Scott's Oliver le Dain, at first the barber and then the favorite counsellor of King Louis XI.; of George Eliot's Nello, who disputed with Macchiavelli. Coming from the American barber who discusses the events of the day with you with the implied air that his opinion is as good as yours, and his vote certainly counts for as much, the humbleness of the English knight of the shears makes you feel as if you were in another world. The obsequiousness of the

salesman, of the shopkeeper, is still more striking, the admission of his inferiority by the frequent use of "sir," the bows, the constant "Thank you sirs," impresses you with the power of the purse, and the fact that the buyer is an autocrat and the seller a humble servant. The deference of the upper middle classes, of the men of letters and of science to the royalty and aristocracy is apparently a worship in kind of the superior by the inferior. How often does one feel "The learned pate ducks to the golden fool!" But I suspect that herein one may be misled by superficial appearances.

The hasty generalizations of Englishmen on our society have for years caused us merriment, and they should lead us to be careful how we fall into the same error in our study of England. A personal incident will illustrate how one may go astray. Present one night at the annual dinner of the Fishmongers Guild in their hall near London Bridge, I observed that no toast was drunk standing except the first one to the Queen. This fashion was emphasized by what occurred after the speech of a young officer who had been one of the defenders of Ladysmith. His speech was clumsy, but the honest face and genuine manner were so attractive that all were glad to give him hearty cheers and applause. In the enthusiasm of the moment, and perhaps carried away by the greeting he had received, he proposed at the end of his speech that a rising toast should be drunk to the defenders of Ladysmith. About a fourth of the company rose in response, when the masters of ceremonies, of whom there were many in the old guild dress, went around whispering in a peremptory manner, "Please sit down, sir; we rise only when we drink to the Queen." Had I kept a diary I should have noted in it: "The English have the curious custom of drinking no toast standing except that to the Queen." But the next night, in conversation with a brother American and an English radical, the explanation came. Mentioning the incident, the brother American, who had been to a political dinner to Mr. Balfour, said that at his dinner all the toasts were drunk standing. Thereupon the English radical explained the apparent inconsistency. "You," he said to me, "were at a city dinner. The city men are generally Tories, and like to show their reverence of royalty by drinking no toast standing except that to the Queen, but among dinners of political, scientific, literary, and University

men no such custom obtains." A false inference may be drawn from another incident. An American gentleman moving in the highest society in London being present one night at a dinner given by Lord Salisbury when the Prince of Wales was a guest, had his attention called by his neighbor to the suprising fact that every one had finger-bowls. "I never saw that before when the Prince was at table," said the Englishman. "Only the Prince should have a finger-bowl, but Lord Salisbury thinks that he can do anything." The man who kept a note-book would write: "What an extraordinary deference the English pay to royalty when only a member of the Royal family may have a finger-bowl at dinner!" Now hear the explanation. After the revolution of 1688, and the settlement of the crown on William and Mary and the Hanoverian family, when the Pretender living in France was a constant claimant for the throne, the adherents of the Pretender in England were constant in drinking to his success. In a general company words pledging him whom they hoped would be their future sovereign were impossible, so they adopted the expedient of passing their wineglasses before they drank over their finger-bowl, which meant they were drinking to the king over the water, — i. e. across the Channel. To frustrate this, the custom was adopted of providing finger-bowls for the royal family alone.

Let me now touch upon some resemblances without any reference to the close union which comes from the two peoples having the same literature, law, religion, and code of morality.

The excitability of the American, his enthusiasm, his demonstrations of joy compared with the calm and phlegmatic manner in which the Englishman accepts victory, have long been a theme of discourse. It was my good fortune to be in London when the news of the Relief of Mafeking came. It was on a Friday evening, and a joyous, hearty celebration was kept up for most of the night; and the whole of the next day, Saturday, and night was given up to the most boisterous manifestations of joy. Nothing was done but to rejoice. By common consent a public holiday had arranged itself. The Mansion House, the Lord Mayor's residence, whence the news had first spread abroad, was the centre, and it was surrounded by an uproarious crowd. In the afternoon the Lord Mayor

desired to go to St. Paul's to assist at the Te Deum service, but it was impossible to get through the crowd. The reporter wrote that the "Lord Mayor's residence was in a state of siege." The people who were packed in the space before the Mansion House sang, cheered, and threw up their hats in the air. "Those who lost their own hats removed those of their neighbors, and a score at a time of hats of all descriptions were to be seen flying up two storeys high, and descending again in a continuous shower." Traffic in many streets was entirely suspended, and he who tried to make his way about did so only with great difficulty. The rejoicing took many forms, but the bibulous manner was in the ascendant. Men shook one another by the hand; they went along arm in arm, shouting and singing. Young women—for the most part shop girls—marched through the streets singing patriotic songs. The favorite song was "God save the Queen," but this at times gave way to "The Absent-Minded Beggar." Girls marched through the streets arm in arm, taking up the whole width of the street, like Harvard students after a football victory. All kinds of trumpets and horns were blown. Young women rode down the Strand on the roofs of hansom cabs waving Union Jacks. Sober-minded citizens went about wrapped from head to foot in Union Jacks. These exhibitions were not confined to the city. In the West End the same thing went on with perhaps greater decorum. That afternoon I went to Oxford, where the evening rejoicing was extended and boisterous. Forty or fifty bonfires lighted the air. Singing, shouting, repeated pledges of the health of Baden-Powell, the playing of pranks, characterized the merriment. Shop girls, domestic servants, and students danced gayly about the bonfire. Students would surround a girl and play the old game of ring-around-a-rosy. As I watched the fun from a hotel window, it seemed to be a rough counterpart of the rustic fairs one sees represented on the opera stage. The crowd in London and Oxford for the most part was good-natured. What took place in those two cities was an example of what was going on all over the kingdom. It was generally agreed that there had never been such manifestations of rejoicing in England. We have had in the last thirty-five years some stirring presidential elections with consequent rejoicing. Grant had an enthusiastic reception after his trip around the world,

Blaine another after his year in Europe. There were the victory of Manila, the victory of Santiago, the reception of Dewey, but none of these demonstrations compared in excitement and vehemence to the rejoicing in England over the Relief of Mafeking. To find a parallel we must go back to the exuberance of joy at the surrender of Lee in April, 1865. When the student of manners and morals writes in the future, "The Americans are more excitable, and more given to extravagant manifestations of joy than their ancestors, the English," it will be sufficient to recall the England of the days of the Relief of Mafeking to show that the two peoples are pretty much the same. A clever observer remarked that the English were harder to rouse than the Americans, but when once roused their demonstrations were livelier and of longer continuance. At this time the rejoicing did not stop with Saturday, but went on at Oxford on the Monday, and in other parts of the country for that day and longer. But the good nature was gone, and rowdyism became rampant. Even on the Saturday there had been rioting in a part of London and in Dover, the mob directing its anger against those of pro-Boer sympathies. In Galashiels mischief was afoot. The mob started a bonfire and attempted to fire the corn-mill buildings, an extensive range of buildings in the centre of the town. In Oxford in the early hours of the Tuesday the students and roughs had a bloody fight. The mob built bonfires, and even endangered the Bodleian library. When an attempt was made to put out the fires, they fought the firemen and cut the hose. In the end the police charged and dispersed the mob. A disagreeable impression was left by these and other occurrences which caused quiet men to shudder when the rejoicing began over the capture of Pretoria.

Ever since Tocqueville with penetration laid bare the tyranny of public opinion in our country, it has been discoursed about as if such tyranny were confined to the United States. I suspect, however, that it is much the same in the mother country. When a nation is in stress, the tyranny of public opinion becomes prominent. Comparing the United States during the Spanish war and England during the South African war, it seems to me that if there were any difference the tyranny was the greater in England. It is a significant

fact that no London morning daily of any importance opposed the war. This state of affairs was brought about only by the exercise of business and social influence. The "Daily Chronicle" was at first in opposition, but on a sudden it shifted its ground, and the two or three leader-writers were forced to leave the journal, as they could not change their convictions to suit the policy of the "Chronicle." The explanation I heard of the change was this: the owner or owners of the "Chronicle" were large paper manufacturers, and the "Daily Mail" with its enormous circulation was a large customer. The proprietor of the "Daily Mail" said to the owners of the "Chronicle," "You support the war or we shall buy no more paper from you." The "Chronicle" came out in support of the war. The Liberals who wished an exponent of their views were obliged therefore to take the "Manchester Guardian," which made arrangements to deliver the newspaper by carrier every morning in London. The casual visitor who judged from the press might well suppose that opinion was unanimous in support of the war. I know of but two journals of standing which differed from the majority,—the "Manchester Guardian" and the weekly "Speaker." The opposition for the most part seemed cowed by the vehemence of the war propaganda. The talk, however, in Liberal social circles against the war and against Mr. Chamberlain was bitter. In another place I drew a contrast between the treatment in England and the United States of the extreme opponents of a war policy in a time of great trouble. I made the comparison between England's war with revolutionary France and our Civil War, and showed that more arbitrary acts were done by our government than by the English. I am inclined to believe that the same tendency holds good. I feel pretty sure that a considerable popular sentiment would have supported our government had it proceeded in an arbitrary manner against the opponents of the Spanish war, and later still against the objectors to the policy in the Philippines. But I do not believe that in England the suggestion was seriously made to bring any direct power of the government towards any interference in the slightest degree with free speaking or free writing. But the indirect influences were enormous. If one guesses that trade, society, political and church preferment were all brought to bear on the side of the government, he will not, I think, be far wrong.

There was always the English mob in reserve which broke up peace-meetings. In my opinion the indirect method of suppressing opposition is better than to do it by arbitrary acts of the government, or by stringent laws effectually enforced against sedition; but that is not a point necessary to discuss. What I am emphasizing is that the tyranny of public opinion is as great in England as here.

Statesmen and politicians in England are appealing to the mass of voters much as our own do, and in a manner that would astonish the men who held power between 1832 and 1867. We have an expression which has come into use within the last four years: "The President has his ear to the ground to discover what the people want." Another expression, "Speaking or playing to the gallery," is somewhat older. This last the English occasionally use. But the stock phrase I will illustrate with three quotations. "That oft quoted authority, the man in the street," wrote the "Times." "The opposition mistakes the shrewdness and wisdom of the man in the street," declared Mr. Chamberlain. "We wonder," asks the "Speaker," "if the man in the street knows the real volume of the China trade." I was amused to hear the expression of the "yellow press"; to listen to a general condemnation of newspapers for their false reports and sensational rumors; to hear the men of the government termed "politicians" instead of statesmen. A citation from the "Speaker" presents well a certain phase of sentiment: "The politicians who forced on the war in a spirit of bombastic ignorance, and who have continued it like men struck blind." Let me go on with the parallels: England had an inefficient war minister. The war at first, so far as the army was concerned, was badly managed. There was an incompetent commander of the active operations. There was dishonesty in the furnishing of supplies. For example, as brought out in the evidence before the committee on frauds and irregularities in regard to war-office contracts, a government official was given £10 to pass a lot of bad hay. Lord Deerhurst, the colonel of a regiment, went to Aldershot to see the boots supplied to a company of his regiment which was going to South Africa. He testified that "he never saw such a thing in his life. You could put your finger through the sole of most of them." Much more lamentable and more serious was the neglect of the sick and wounded by the ineffi-

cient hospital provisions. This was brought to the knowledge of the public by the letters to the "Times" from Burdett-Coutts, a member of the House of Commons and supporter of the government. He spent considerable time in South Africa, seems to have investigated the subject thoroughly, wrote fearlessly and candidly. Under date of May 29 he reported that there were twenty thousand sick and wounded troops that day in South Africa; more than half of them were down with typhoid fever. The medical arrangements were inefficient. Men were "dying like flies" for the want of ordinary care. He himself had seen many "sad and sickening spectacles." "So far as the sick are concerned," he wrote, "there are two plagues in South Africa, the plague of blindness and the plague of whitewash." This letter was published in the "Times" of June 27, stirred the public mind, and brought out additional evidence which sustained the charges brought by Burdett-Coutts. The leaders in the "Times," the correspondence printed in its columns, the debate in the House of Commons on the subject, all went to show that Burdett-Coutts had not given a sensational account based on isolated experiences, but that he had told a plain, truthful tale of suffering which might have been prevented. "If Mr. Burdett-Coutts is right," said the "Spectator," "a hospital in the Middle Ages cannot have been worse provided" than were the hospitals in South Africa. The defence of the government by Mr. Wyndham and Mr. Balfour was lame. Mr. Balfour took the view of a narrow partisan and made a speech unworthy of himself. The effect of these disclosures on public sentiment was profound. With all the incompetence, misfortunes, and disasters of the war, the English had prided themselves on their hospital arrangements, where "science and humanity went hand in hand." They had been fond of saying "Never have the sick and wounded in war been cared for with such a wealth of apparatus and such abundance of comforts." All this was suddenly shown to be a delusion.

If England and the United States are alike in their incompetent management of a war until they learn the trade, — and not being military nations, the trade has to be learned in each war, — they are alike in the public exposure of the inefficiency of their servants; but owing to the mass of influences of one sort and another, the remedies in both countries are applied slowly.

A curious instance of the Circumlocution Office occurred the first day when this subject was brought up in the House of Commons. During the question hour Mr. Balfour said that printed copies of the correspondence between Lord Roberts and Lord Lansdowne (the Secretary of State for War) would be put in the hands of the members of the House that evening, but this proposed arrangement broke down and no printed copies were distributed in the House. This was, according to the "Times," "owing to a complicated system of red tape which surrounds the Stationary Office." Mr. Wyndham tried to overcome the departmental difficulties thrown in his way, but without success, as there was "a dispute as to his authority to order the printing to be done."

Repeated visits to England seem to convince one of the growth of power and influence of Mr. Chamberlain. I had the good fortune to be present in the House the night on which he made a set speech when he introduced his bill for the federation of the Australian colonies. There was a hushed expectation when he rose. Every word was listened to in the profoundest silence. One appeared to feel that the greatest man in the House of Commons, the leading man of the government after Salisbury, was swaying members and lookers-on. The "Spectator" declared that Mr. Chamberlain's speech was "so lucid and so well constructed that it may be said without exaggeration to be the clearest and most effective presentation of a bill made to the House of Commons during the present generation." I will give two personal experiences showing how differently Mr. Chamberlain is regarded by members of his own party. To a Liberal Unionist member of the House of Commons, a gentleman of profound knowledge and large experience, I said: "When I was in England at the time of the general election of 1895, it seemed to me that Arthur Balfour was the most popular man in the kingdom; that he was rising fast, and that when Lord Salisbury would retire he would be the leader of the Unionist party and prime minister. Now, however, I fancy that he has since lost ground, and that the next prime minister will be Mr. Chamberlain." The gentleman replied: "I think you are wrong in both cases. Arthur Balfour would not have succeeded in 1895. Mr. Chamberlain would not now. If Lord Salisbury should retire, the Duke of Devonshire would quite likely be prime minister." The same

night I made the same remark to one of the under secretaries. "You are quite right," he said. "The tendency has been just as you have expressed it. Mr. Balfour has lost and Mr. Chamberlain has gained, so that he is now distinctly in the line of succession." The opinion one hears in Liberal circles is that Chamberlain brought on the South African war, which means that he dominated such men as Lord Salisbury, the Duke of Devonshire, Arthur Balfour, and Mr. Goschen, and swayed them to his own ends. One is of course sceptical as to there being such a one-man power in a constitutional and representative government, but if there be truth in the theory, what ability and force are implied in Mr. Chamberlain.

If I agreed with some Americans that the working of the English government was better than our own, I should ascribe it to the reason that the men in the government and in the administration were better trained for their special work. Political life is fascinating in England. The residence in the most attractive capital of the world, the society open to a Member of Parliament, the ambition to be a leading man of one's own party, the joy when one is called to a place in the ministry, the importance of a seat on the front bench in the House of Commons, either in the government or in the opposition, — all this makes a life to the politically ambitious man perhaps unequalled in its attractiveness. The leading men in English politics for the most part during the century just closing have been educated at one of the two great universities. Many of them have never been obliged to engage in any bread-winning occupation. Study, society, travel, practice in politics have been their life. Some of those who have been obliged at times to earn a livelihood — as, for example, Lord Salisbury, Mr. Bryce, and John Morley — have in journalism, in university work, or in literature been occupied with the philosophic side of politics. I question whether the world has ever seen better training for political life than has obtained in England in our century. The results are a great tribute to the training. It is probable that politics and the cognate profession of law attract the best minds of England among the men who have energy and crave power, and the training and later experience form an admirable process of selection. On the other hand it is a common remark in our country that on the whole the prizes in business are more

desirable than those in politics, with the result that the most able men who desire an active life as distinct from one of the professions, engage in banking, trade, or manufactures; that we gain therefore in material development at the expense of government and administration. Can it be that the reverse is taking place in England, that political life there is the gainer at the expense of business? Here are some patent facts about the iron and steel industry. Thirty-three years ago in this industry England was in quantity of product and in excellent practice the head of the world. Now the United States surpasses England in amount of production; both the United States and Germany surpass her in skill. American steel manufacturers learned all that England had to teach, and ten years ago discovered that Germany was the school to go to. The learning of those lessons, the adaptiveness of the American, the readiness with which labor-saving machinery was taken up, have put our country in the front rank, so that the neutral markets of the world are disputed successfully with England and with Germany.

The relative decline in English energy comes at a most inopportune time, — at a time when her own supplies of ore and those available in Spain are approaching exhaustion, and when the growing scarcity of her coal has caused famine prices to prevail. The superiority of America comes from greater ability and better training applied to greater resources, and it displays itself in an easier receptivity to new ideas and new methods. In the race of material development among nations no nation can afford to go back. Progress therein is the law of life. A government and an administration carried on by men of the best intellectual training will avail little unless the people governed are kept at work and are well fed. Government can do something towards the fostering of industries, but the main reliance for industrial success must rest on individual initiative and ability applied to material resources. It was a saying of John Bright: "Engineers will be remembered when politicians are forgotten."

There are curious things in the whirligig of time. During our Civil War and for some time afterward, if an American found any journalistic expression of sympathy in England, he would find it in the Liberal journals. To some extent that has changed. In the conservative "Times" and "Spectator" I am

finding constant sympathetic references to the United States, and not infrequent suggestions that their countrymen may profit by our example, while in the radical "Speaker" I find rather often the sneering tone of the "Times" and "Saturday Review" of thirty-seven years ago. Mr. Chamberlain is fond of drawing lessons of profit from America, and he stated with emphasis and approval that the Constitution of the Australian federation followed more than any other the Constitution of the United States. Contrariwise it is true, I think, that most of the English socialists and labor union leaders who visit this country are dissatisfied with the outlook. Is one reason that stated by the "Times" correspondent who wrote a series of careful articles on the industrial development of the United States, pointing out our progress and explaining why we were surpassing England? "Employers in America," wrote the "Times" expert, "have not meekly allowed control to pass out of their hands, and tamely submitted to restriction of output and to general inefficiency, as the British employer has." It is a common remark that labor has England by the throat.

MR. GEORGE B. CHASE said: —

Mr. Rhodes has given us in his delightful "Impressions" three opinions of Mr. Chamberlain, — his own, and those of two well-known members of Parliament. I think the Society may be glad to have still another opinion of the present Colonial Secretary of England given as far back as the autumn of 1877. But first, something of the circumstances which led up to it.

"Mr. Chamberlain, whose splendid achievements as Mayor of Birmingham had brought him into the Imperial Parliament to represent new ideas and new aspirations, was already coming to the front as an advanced Radical. It was under his auspices that Mr. Gladstone at the end of May, 1877, paid a visit to Birmingham on the famous occasion when the caucus was founded. The houses were decorated, the streets lined with enthusiastic spectators. Mr. Gladstone was welcomed by town councillors, and played along the streets by trade-union bands. The principal occasion of the visit was the execution of the Caucus Plan, to which Mr. Gladstone gave his adhesion. Representatives of a number of Liberal Associations met at Birmingham for the purpose of Federation. . . . The resolutions in favor of federation were unanimously adopted. It was a great victory for Mr. Chamberlain."¹

¹ Life of W. E. Gladstone, edited by Sir Thomas Wemyss Reid, p. 622.

A few months later Mr. Gladstone made his well-remembered visit to Ireland. On leaving Dublin Mr. and Mrs. Gladstone went to Killruddery, in Wicklow, there to stay a few days with old friends of their youth. One day while walking about the place his host asked Mr. Gladstone who was likely to succeed him as leader of the Liberal Party when he retired from Parliament. The Prime Minister replied, "There is but one man, Mr. Chamberlain."

Less than nine years afterwards, in June, 1886, the Liberal Party was split by the division on the question of passing Mr. Gladstone's Home Rule Bill, when ninety-three Liberals, most of them thereafter to be known as Liberal Unionists, under the lead of Lord Hartington, Mr. Bright, and Mr. Chamberlain, separated themselves from their party and voted against the bill.

To his striking opinion of Mr. Chamberlain I desire to call attention to another opinion of Gladstone's, and a very strange one, given in the privacy of his own home, at Hawarden, soon after he returned from Ireland, in November, 1877. It concerns John Bright, to us men of New England *clarum et venerabile nomen*. In speaking of O'Connell, Gladstone said he thought him, "except perhaps Mirabeau, the greatest demagogue that ever lived, and in that way superior even to Bright."¹

Mr. T. W. HIGGINSON called the attention of the Society to the great value of the recent memoir by C. H. Farnham of our late associate Francis Parkman, and especially to the interesting description of Parkman's early studies in natural science, as leading the way to his later researches among the Indians. He added the following remarks:—

Some points may well be added to this analysis. On examination of the records of the Davy Club, then a flourishing chemical society in Harvard College, but long since extinct, it appears that Parkman was the first member of his class

¹ Recollections, 1832 to 1886, by the Right Honorable Sir Algernon West, K. C. B., p. 285. Harper Brothers, 1900.

The curious reader may well contrast this opinion of Bright with the generous, indeed noble words of the latter concerning Gladstone. *Ibid.*, p. 296.

Mr. Gladstone's private utterances were sometimes at variance with his public speeches. See Wemyss Reid's *Life*, p. 758.

to join that club, although this fact was not known to his biographer. What is more important is to call attention to a fact which only Parkman's contemporaries could recall, and which is naturally not recognized by his biographer; namely, that there prevailed in Boston during Parkman's boyhood a wave of enthusiasm for all scientific pursuits and experiments, coming directly from the writings of Maria Edgeworth, then very popular among children and parents. Under their guidance the boys in Boston and Cambridge were led to work miniature printing-presses, to make their own sealing-wax and seals, and to construct electrical machines and fireworks. The "Physioramic Pyrotechnicon or Pyrrhic Fires," exhibited by Parkman as a boy and described by his biographer (p. 48), had been earlier exhibited under the same name by my classmate, Francis Minot, a boy several years older than Parkman, and I well remember his bringing it out to Cambridge for that purpose one Fourth of July. Minot, afterwards an eminent physician, was the leader among Boston and Cambridge boys in all such experiments, deriving the impulse largely from his mother, who was a sister of Admiral Charles H. Davis, and was, I have heard, a correspondent of Miss Edgeworth. If I am not mistaken, Minot had also received personally from Maelzel, the great mechanician, some lessons in the art of pyrotechny, such as the young Parkman jocosely claims for himself; and Parkman may even have shared these. All this has a certain interest as showing that these early scientific tastes of Parkman's were not wholly an individual matter, but in some degree the result of his surroundings.¹

¹ The following note from Mr. Brown gives the facts as to the Davy Club:—

CAMBRIDGE, MASS., GORE HALL, 5 NOV., 1900.

MY DEAR SIR,— Mr. E. Wheelwright, in his elaborate memorial of the Class of 1844, leaves the Davy Club out of the list of those to which Parkman belonged, and also omits it from the list of College Societies in the appendix [as well as in his *Life of Parkman* in the Publications of the Colonial Society, vol. i. pp. 304, 305]. However, I have found in the MS. records of the Club these sentences, which answer your inquiry.

"Mch. 27, 1842.

"The following Sophomores were nominated, Dix, Wheelwright, Parkman, Johnson, Faulkner, Wheatland, J. B. Smith, and Baldwin."

"March 28, 1842.

"On balloting, following gentlemen elected, Dwight, Hale, Rogers, R. P., Cary Parkman, F., Johnson, Faulkner, Wheatland, Saltonstall, J. B. Smith, and Baldwin."

Rev. Dr. JAMES DE NORMANDIE communicated a copy of the original draught of Rev. Dr. Ezra Stiles's well-known letter to Benjamin Franklin, inquiring as to Franklin's religious sentiments. Before Stiles became President of Yale College he was for a short time settled in Portsmouth, New Hampshire ; and this draught, which differs in several places from the letter as printed in Mr. Sparks's edition of the Works of Franklin, is dated at Portsmouth, and is in Stiles's own handwriting. It was given to Dr. De Normandie by a descendant of one of Stiles's parishioners in his Portsmouth church, and is now in the Boston Public Library. In the library of Yale College is a copy of this letter in the handwriting of one of Stiles's daughters, which is almost identical with Mr. Sparks's copy. Dr. De Normandie suggested that Stiles wrote the letter at Portsmouth, and sent it to his daughter, who corrected the misspellings in the original and added a few words in various places to improve the style or complete the sense.

Dr. De Normandie said that he would mention a circumstance which, considering the frequent changes in the places of residence in this country, must be of rare occurrence. Griffin Crafts was the first white settler in "Rockesborough," whose "sone John born July 10th, 1630," is the first entry in the Town Records. As minister of the First Church in Roxbury, he had married this day Emily Alice Crafts, daughter of William A. Crafts, Clerk of the Railroad Commissioners, the eighth generation living on the land of the old homestead.

Mr. CHARLES C. SMITH communicated some unpublished letters of Chief Justice Marshall, and said :—

In examining since our last meeting the Pickering Papers, to revive my recollection of the correspondence between Chief Justice Marshall and Colonel Pickering, my eye fell on two letters from the former which it seems worth while to print in full in the Proceedings. The first is an answer to two letters

At this same meeting, Parkman, G. F., was nominated to be balloted for at the next meeting.

" March 31.

"Society met . . . and received the signatures of Messrs. Parkman, Rogers, Wheatland, and Baldwin."

So Francis Parkman, '44, was not only elected, but he *joined* the Club.

Very truly yours,

COLONEL HIGGINSON.

WILLIAM GARROTT BROWN.

from Colonel Pickering, respectively dated January 17 and January 24, 1826, the rough draughts of which are in the Pickering Papers. In them Pickering, among other things, expressed his gloomy forebodings at the extension of slavery, his estimate of the talents and party services of William B. Giles, and his detestation and contempt for the acts and sentiments of Governor Troup of Georgia.

Judge Marshall's reply is as follows : —

Colonel Timothy Pickering. Salem, Massachusetts. Mr Story.

WASHINGTON, March 20th, 26.

DEAR SIR, — I had the pleasure of receiving your letters of the 17th & 23^d of Jan^y by M^r Story & congratulate you very sincerely on the vigorous health which your letters manifest. It is consoling to think that we may look forward to very advanced life with the hope of preserving with health & temperance so large a share of mental & bodily strength as to make life still desirable & agreeable.

I concur with you in thinking that nothing portends more calamity & mischief to the Southern States than their slave population. Yet they seem to cherish the evil and to view with immovable prejudice & dislike every thing which may tend to diminish it. I do not wonder that they should resist any attempt, should one be made, to interfere with the rights of property, but they have a feverish jealousy of measures which may do good without the hazard of harm that is, I think, very unwise.

All America, I believe, will join you in opinion respecting the late intemperate course of the Governour of Georgia. I very much fear that the embarrassment into which the purchase from the Creeks has thrown us will be prolonged by a rejection of the last treaty.

You are undoubtedly right in supposing M^r Giles to be a discontented man. He was unquestionably a very powerful debater on the floor of either branch of the legislature, & has seen men placed before him by the party which he has served very effectually to whom he gave precedence very reluctantly. He fell out with Virginia too, but seems now determined to write himself again into favour. His health has been for some years very bad, but he is now getting rather better and would be very glad to come forward once more in political life. He is undoubtedly desirous of recommencing his career as a public man. He may probably be successful as he undoubtedly possesses, & is believed to possess, considerable talents and avows opinions which are very popular in Virginia.

Your recollection of events which took place for the last twenty years is very accurate and you replace in my memory many things which I had almost forgotten. There are not many who retain them as fresh as you do, and I am persuaded that they will soon be entirely lost.

Those who follow us will know very little of the real transactions of our day, and will have very untrue impressions respecting men & things. Such is the lot of humanity.

Farewell. With warm wishes for your health & happiness, and with great and respectful esteem,

I am, dear Sir, your obed^t.

J. MARSHALL.

The second letter is in answer to a very long and elaborate letter from Colonel Pickering, depreciatory of General Washington's military character and capacity, as "strikingly deficient" in "quick discernment and instant decision." This letter, which fills nearly thirty quarto pages, is not mentioned in Mr. Upham's Life of Pickering; but it seems to have been carefully copied by Pickering for publication, and prefixed to his copy are a titlepage and an "Advertisement," at the close of which he writes, referring to Judge Marshall: "I thought that candour towards so excellent a man and my friend, as well as a regard to my own reputation, required me to state explicitly to Judge Marshall some principal facts on which my opinion of Washington's military character was formed; and also to glance at some incidents tending to show that he was not endowed with the talents of a Statesman, as I knew that he did not possess those of a General."

Judge Marshall's letter acknowledging the receipt of this missive is a model of courteous and cautious restatement of his own opinions for any one who is determined not to be drawn into a useless controversy. Of this Pickering was fully aware, and in a letter to Marshall written nearly a year later he says: "The amicable tenor of your letter of the 14th [15th] of March was highly gratifying to me"; and again, "I was happy that you took in good part my frank statement of facts respecting General Washington."

Judge Marshall writes:—

Colonel Timothy Pickering. Salem, Massachusetts. Mr Justice Story.

WASHINGTON, March 15th, 1827.

MY DEAR SIR, — I was much obliged by your favour of the 14th of Feb^y, through our friend Mr Mercer. I am always gratified at being recollected by my old friends, for I find myself incapable of making new ones.

I have seen in the papers the discussions between my brother John-son and yourself respecting Count Pulaski and the battle of German-

town. It is not a little gratifying to us who are treading close upon your heels to observe how firmly you step & how perfectly you retain your recollection. You are a little before me and I find myself almost alone in the world. With the exception of Judge Peters, yourself & Mr Wolcot I can scarcely find any person who was conspicuous on the great theatre of our country when I first began to mix in public affairs. Things are very much changed as well as men.

Is it probable that you will ever travel as far south as Washington? Few things would give me so much pleasure as to see you, but that is a pleasure which I scarcely dare promise myself. It is probable that the line which circumscribes your movements to the south will never intersect that which bounds me on the north.

You give a great many interesting anecdotes of General Washington which serve to develop his character. Your opportunities of personal observation enable you to take a near view of the man. I have seen him only at a distance. I have looked at him through those actions which were the result of mature deliberation and consultation with those to whom he gave his confidence. The conclusion to which this view of him has conducted me is extremely favourable to his judgement, his wisdom, and his virtue. If he did not possess that rapidity of decision which distinguishes many men of genius, there seems to have been a solidity in his mind which fitted him in a peculiar manner for occupying the high place he filled in the United States in the critical times in which he filled it. No feature in his character was more conspicuous than his firmness.* Though prizing popular favour as highly as it ought to be prized, he never yielded principle to obtain it, or sacrificed his judgement on its altar. This firmness of character added to his acknowledged virtue enabled him to stem a torrent which would have overwhelmed almost any other man, and did, I believe, save his country.

Such is my impression of Washington, an impression certainly not formed on a near view of him, but on a very attentive consideration of his character, his conduct, and his papers. You could take a closer view of him, especially as a military man than was in my power, and have consequently better means of judging correctly than I possess.

With the best wishes for your health and happiness and with sincere and respectful esteem,

I am, dear Sir, your obed^t

J. MARSHALL.

[* I recollect that when, on some question of importance, Washington was consulting the heads of departments, of whom I was one, he said, "Let me see my way clear, and no consideration shall turn me aside," or used words to that effect; manifesting that firmness in the performance of his official duties to which Judge Marshall here refers. — T. PICKERING.]

I desire also to communicate from the Story Papers for publication in the Proceedings, twenty-six letters from Chief Justice Marshall to Justice Story written between 1819 and 1834, both dates inclusive. These letters deal mainly with the legal and political questions of that period, and in printing them I will add such notes as may seem desirable.

The Hon'ble Joseph Story. Salem, Massachusetts.

RICHMOND, March 24th, 1819.

DEAR SIR, — Since my return to Washington I mentioned to a very near friend who owns an extensive nail factory that I had understood that some machinery was in use in & about Boston which greatly facilitated the making of nails. He was anxious to have some account of the machine which I was totally unable to give.

I have some idea that the subject was mentioned by you, — at any rate it was mentioned in your presence. I understood that there were two machines; one very expensive, the other almost equally valuable & costing only about one hundred dollars. If you have leisure will you have the goodness to mention in a letter to me what these machines are called, what is their operation, & what they cost? You can probably say something about their advantages.

Our opinion in the Bank case has roused the sleeping spirit of Virginia, if indeed it ever sleeps.¹ It will, I understand, be attacked in the papers with some asperity, and as those who favor it never write for the publick it will remain undefended & of course be considered as *damnably heretical*.

Yours truly.

J. MARSHALL.²

The Hon'ble Joseph Story. Salem, Massachusetts.

RICHMOND, May 27th, 1819.

MY DEAR SIR, — I had the pleasure of receiving a few days past your favour of the 15th, & thank you very sincerely for the information you have given respecting the nail machines in use in your country. The information will be valuable to my friend.

I am much obliged by the alterations you have made in the opinion

¹ This was the decision in the case of *McCulloch v. the State of Maryland* (4 Wheaton's Reports), denying the right of a State to tax the Bank of the United States.

² At the foot of the foregoing letter is the following memorandum in the handwriting of Mr. Webster: "Mr. Baldwin & Mr. May referred me to Mr. Geo. Odiorne. I have seen him; he says he will send *one*, all fitted for use, for 200 Dlls., altho that is below his usual price, & he would not engage to sell another at that rate. The machine can be shipped here for Richmond, on request. I believe this to be the least expensive & is the machine which is in successful operation in various places. D. W."

in the Dartmouth College case, & am highly gratified by what you say respecting it. The opinion in the Bank case continues to be denounced by the democracy in Virginia. An effort is certainly making to induce the legislature which will meet in December to take up the subject & to pass resolutions not very unlike those which were called forth by the alien & sedition laws in 1799. Whether the effort will be successful or not may perhaps depend in some measure on the sentiments of our sister states. To excite this ferment the opinion has been grossly misrepresented; and where its argument has been truly stated it has been met by principles one would think too palpably absurd for intelligent men. But prejudice will swallow anything. If the principles which have been advanced on this occasion were to prevail the constitution would be converted into the old confederation. The piece to which you allude was not published in Virginia. Our patriotic papers admit no such political heresies. It contained, I think, a complete demonstration of the fallacies & errors contained in those attacks on the opinion of the Court which have most credit here & are supposed to proceed from a high source, but was so mangled in the publication that those only who had bestowed close attention to the subject could understand it. There were two numbers & the editor of the Union in Philadelphia, the paper in which it was published, had mixed the different numbers together so as in several instances to place the reasoning intended to demonstrate one proposition under another. The points & the arguments were so separated from each other, & so strangely mixed as to constitute a labyrinth to which those only who understood the whole subject perfectly could find a clue.

I wish to consult you on a case which to me who am not versed in admiralty proceedings has some difficulty. The Little Charles was libelled for a violation of the first embargo act in 1808. She was acquitted in the District, but condemned in the Circuit Court. After a thousand delays a question is now before the Circuit Court as a Court of Admiralty for judgment on the bond given on the property being restored. Several objections are made, two of which deserve consideration. The first is that the order for restoration was made, not in court but by the Judge out of court, not at a called court, [and] second that the bond was taken by the marshal to himself & not to the U. S. Upon this order the vessel was delivered, & this bond has been returned to court, but has not been acted on. Nor is there any act of the Court approving the proceeding. It is contended to be a mere act *in pais* not sanctioned by the court. That it is the unauthorized act of the marshal who might release the bond or sue upon it, and that the court cannot consider it as in the place of the vessel & so act upon it.

With great regard and esteem, I am, dear Sir, your obed^t

J. MARSHALL.

The Honble. Joseph Story. Salem, Massachusetts

RICHMOND, July 13th, 1819.

MY DEAR SIR, — I had the pleasure, this morning of receiving your letter of the 7th, by which I am greatly obliged. I shall at the next term decide the case of the Little Charles in conformity with your reasoning. It is, I think, perfectly sound; & were this even questionable the practice of the courts ought to be uniform.

Another admiralty question of great consequence has occurred at the last term which I would carry before the Supreme Court, if I could, but as I have not the privilege of dividing the Court when alone, & as the sum is only about 1500\$, it must abide by my decision. It is, however, one of general importance, & I must ask the favor of you to give me your views of it.

A vessel belonging to the port of Richmond in Virginia was hypothecated for necessary repairs in New York & has been libelled in the District Court of this State. The District Judge condemned her, & the case is before me on an appeal. It has been agreed that New York is as much foreign to Virginia as Ireland or Guernsey to England. It has also been agreed that the power of hypothecation on simple interest is not so strictly guarded as the power of pledging the ship on bottomry for usurious interest.

From a consideration of this case I have been led to doubt what rule ought to be adopted in the United States, & to question the propriety of applying the rule in England to our situation. The foundation of the rule is that in a foreign port this exercise of ownership on the part of the master may be necessary whereas in a domestic port it cannot be presumed to be so. Now let the ports of one state be considered as foreign or domestic with respect to the vessels of another & cases may arise in which the literal application of the rule would violate its principle. It would be absurd that a vessel belonging to Amboy should be hypothecated in New York. But the same vessel at New Orleans or in the mouth of Columbia would be completely out of the reach of the owner. The necessity for exercising this power by the master would be much stronger than in the case of a vessel belonging to one side of the bay of Passimiquoddy hypothecated in a port on the other.

I do not think a republication of the piece you mention in the Boston papers to be desired, as the antifederalism of Virginia will not, I trust, find its way to New England. I should also be sorry to see it in Mr Wheaton's appendix because that circumstance might lead to suspicions respecting the author & because I should regret to see it republished in its present deranged form with the two centres transposed.

I am highly gratified by the sentiments you express & shall always feel a grateful recollection of them. The esteem of those we esteem is among the most delightful sensations of the human heart.

I had never thought of preparing an opinion in the militia case. That is committed to you, & cannot be in better hands. I shall just sketch my ideas for the purpose of examining them more closely, but shall not prepare a regular opinion. As at present disposed I do not think we shall differ.

With very much esteem & regard,

I am, dear Sir, your obed^t

J. MARSHALL.

M^r Justice Story. Salem, Massachusetts.

RICHMOND, June 15th, 1821.

DEAR SIR, — A question has occurred in the course of this term which I have taken under advisement for the purpose [of] enquiring whether it has been decided by my brethren. It is this: A & B trading under the firm of A, B & Co. were indebted to the U. S. on bonds for duties. They made an assignment of all their social effects to secure certain creditors of the firm. A had private property to a considerable amount, which he afterwards conveyed to secure his individual creditors. The question is, whether the first conveyance was an act of insolvency within the act of Congress so that the priority of the U. S. attached on the social effects, or whether the act of insolvency was not committed until the execution of the second deed. The question arises on a contest between the creditors secured by the two deeds, each contending that the claim of the U. S. should be satisfied by the other. Had the second deed never been executed would the first have amounted to an act of insolvency on the part of the firm? If the case has ever occurred in your circuit I shall be glad to know how it has been decided. If it has never occurred you will oblige me by stating your opinion on it, if you have one.

The opinion of the Supreme Court in the Lottery case¹ has been assaulted with a degree of virulence transcending what has appeared on any former occasion. Algernon Sidney is written by the gentleman who is so much distinguished for his feelings towards the Supreme Court,² & if you have not an opportunity of seeing the Enquirer I will send it to you. There are other minor gentry who seek to curry favor & get into office by adding their mite of abuse, but I think for coarseness & malignity of invention Algernon Sidney surpasses all party writers who have ever made pretensions to any decency of character. There is on this subject no such thing as a free press in

¹ This was the case of *Cohens v. Virginia* (6 Wheaton's Reports), in which the Court maintained its jurisdiction, even in a criminal case, to review the judgments of State Courts on Federal questions.

² Algernon Sidney was the pseudonym of Spencer Roane, a Judge of the Virginia Court of Errors, and a warm friend of Jefferson. The name has often been adopted by writers for the newspaper press who belonged to very different political schools.

Virginia, and of consequence the calumnies and misrepresentations of this gentleman will remain uncontradicted & will by many be believed to be true. He will be supposed to be the champion of state rights, instead of being what he really is, the champion of dismemberment.

With great regard & esteem

I am, dear Sir, yours, &c.

J. MARSHALL.

I am anxious to know whether that amendment to the constitution on which M^r Webster & yourself were so distinguished has been approved or rejected by your sapient people.¹

The Honble M^r Justice Story. Salem, Massachusetts.

RICHMOND, July 13th, 1821.

MY DEAR SIR,—I had yesterday the pleasure of receiving your letter of the 27th of June, by which I am greatly obliged. I shall decide the case concerning which I enquired in conformity with your opinion. The law of the case I have thought very doubtful; the equity of it is, I think, pretty clear.

Your kind expressions respecting myself gratify me very much. Entertaining the truest affection & esteem for my brethren generally, & for yourself particularly, it is extremely grateful to believe that it is reciprocated. The harmony of the bench will, I hope & pray, never be disturbed. We have external & political enemies enough to preserve internal peace.

What you say of M^r Jefferson's letter rather grieves than surprises me.² It grieves me because his influence is still so great that many, very many will adopt his opinions, however unsound they may be, & however contradictory to their own reason. I cannot describe the surprize & mortification I have felt at hearing that M^r Madison has embraced them with respect to the judicial department.

For M^r Jefferson's opinion as respects this department it is not difficult to assign the cause. He is among the most ambitious, & I suspect among the most unforgiving of men. His great power is over the mass of the people, & this power is chiefly acquired by professions of democracy. Every check on the wild impulse of the moment is a

¹ Judge Marshall's reference is to the part taken by Mr. Webster and Judge Story in the debates on the apportionment of the Senate and House of Representatives. The amendment was rejected when it was submitted to the people.

² The letter here commented on was probably the letter to William C. Jarvis, printed in Washington's edition of the Writings of Thomas Jefferson, vol. vii. pp. 177-179, in which Jefferson denies the right of the Judges to issue a mandamus to any "executive or legislative officer to enforce the fulfilment of their official duties," and asserts that it is a "very dangerous doctrine" "to consider the judges as the ultimate arbiters of all constitutional questions."

check on his own power, & he is unfriendly to the source from which it flows. He looks of course with ill will at an independent judiciary.

That in a free country with a written constitution any intelligent man should wish a dependent judiciary, or should think that the constitution is not a law for the court as well as the legislature would astonish me, if I had not learnt from observation that with many men the judgement is completely controuled by the passions. The case of the mandamus may be the cloak, but the batture¹ is recollected with still more resentment

I send you the papers containing the essays of Algernon Sidney. Their coarseness & malignity would designate the author if he was not avowed. The argument, if it may be called one, is, I think, as weak as its language is violent & prolix. Two other gentlemen have appeared in the papers on this subject, one of them is deeply concerned in pillaging the purchasers of the Fairfax estate in which goodly work he fears no other obstruction than what arises from the appellate power of the Supreme Court, & the other is a hunter after office who hopes by his violent hostility to the Union, which in Virginia assumes the name of regard for state rights, & by his devotion to Algernon Sidney, to obtain one. In support of the sound principles of the constitution & of the Union of the States, not a pen is drawn. In Virginia the tendency of things verges rapidly to the destruction of the government & the re-establishment of a league of sovereign states. I look elsewhere for safety.

With very much esteem & affection

I am, dear Sir, your

J. MARSHALL.

I will thank you for the copy of the debates.²

The Hon'ble Mr Justice Story. Salem, Massachusetts.

RICHMOND, Sept^r 18th, 1821.

MY DEAR SIR, — I had yesterday the pleasure of receiving your favor of the 9th. I thank you for your quintal of fish, & shall try my possibles to observe your instructions in the cooking department. I hope to succeed; but be this as it may I promise to feed on the fish with an appetite which would not disgrace a genuine descendant of one of the Pilgrims.

I am a little surprized at the request which you say has been made

¹ The first of these references is to the opinion of the Chief Justice in the case of *Marbury v. Madison* (1 Cranch, 153). The second reference is to the protracted litigation which involved the title to what was known as the batture, near New Orleans, and in which Mr. Jefferson took a strong personal interest.

² The Debates in the Massachusetts Convention were published in an octavo volume in 1821, from the reports in the "Boston Daily Advertiser." The volume was reprinted in 1853.

to Mr Hall,¹ although there is no reason for my being so. The settled hostility of the gentleman who has made that request to the judicial department will show itself in that & in every other form which he believes will conduce to its object. For this he has several motives, & it is not among the weakest that the department would never lend itself as a tool to work for his political power. The Batture will never be forgotten. Indeed, there is some reason to believe that the essays written against the Supreme Court were, in a degree at least, stimulated by this gentleman, and that although the coarseness of the language belongs exclusively to the author, its acerbity has been increased by his communications with the great Lama of the mountains. He may therefore feel himself in some measure required to obtain its republication in some place of distinction. But what does Mr Hall purpose to do? I do not suppose you would willingly interfere so as to prevent his making the publication, although I really think it is in form & substance totally unfit to be placed in his law journal. I really think a proper reply to the request would be to say that no objection existed to the publication of any law argument against the opinion of the Supreme Court, but that the coarseness of its language, its personal & official abuse & its tedious prolixity constituted objections to the insertion of Algernon Sidney which were insuperable. If, however, Mr Hall determines to comply with this request, I think he ought, unless he means to make himself a party militant, to say that he published that piece by particular request, & ought to subjoin the masterly answer of Mr Wheaton. I shall wish to know what course Mr Hall will pursue.

I have not yet received the debates in your convention. Mr Caldwell I presume has not met with an opportunity to send the volume. I shall read it with much pleasure.

I have seen a sketch of your address to the Suffolk bar & shall be very glad to have it at large.² I have no doubt of being much gratified by the manner in which the subjects you mention are treated.

A deep design to convert our government into a mere league of states has taken strong hold of a powerful & violent party in Virginia. The attack upon the judiciary is in fact an attack upon the union. The judicial department is well understood to be that through which the government may be attacked most successfully, because it is without patronage, & of course without power. And it is equally well under-

¹ Mr. John E. Hall, editor of a law journal published in Philadelphia. From 1808 to 1817 he published "The American Law Journal." In 1821 he published one volume of "The Journal of Jurisprudence," which was intended to be a continuation of the former periodical, but it did not reach a second volume. It does not contain the article against the Supreme Court to which reference is here made.

² This address was not printed until 1829, when it appeared for the first time, in the "American Jurist."

stood that every subtraction from its jurisdiction is a vital wound to the government itself. The attack upon it therefore is a masked battery aimed at the government itself. The whole attack, if not originating with M^r Jefferson, is obviously approved & guided by him. It is therefore formidable in other states as well as in this, & it behoves the friends of the union to be more on the alert than they have been. An effort will certainly be made to repeal the 25th sec. of the judicial act.

I have a case before me which cannot be carried up to the Supreme Court & which presents difficulties which appear to me to be considerable. It is an action of debt brought by the U. S. for a forfeiture incurred by rescuing some distilled spirits which had not been proceeded on by the distiller according to law.

The declaration charges in the alternative that the defendants or one of them rescued or caused to be rescued, &c.

It is clear enough that this would be ill in an indictment or information, but I am inclined to think it is cured by our statute of jeofails. The defendants insist that this statute does not apply to suits brought by the U. S., but I think it does.

Another difficulty has puzzled me so much that I have taken the case under advisement with the intention of consulting some of my more experienced brethren.

The difficulty is this. At the trial the rescue was proved only by two depositions. Each contains the following expressions, "On Nov^r 17th, 1815, agreeable to written & verbal instructions from M^r William M^cKinly, collector, I," &c.

The defendants demurred to the testimony & the District Court gave judgement for the plaintiffs.

It is contended, 1st, That there is no sufficient evidence that M^cKinly is collector. His commission ought to be produced & its absence cannot be supplied, but here is not even a direct averment that he is collector. 2^d, The written instructions of the collector ought to be produced to show that the seizure was made under his authority.

You are accustomed to these cases. Will you aid me with your advice?

Yours truly & sincerely.

J. MARSHALL.

The Hon^{ble} M^r Justice Story. Salem, Massachusetts.

RICHMOND, July 2^d, 1823.

MY DEAR SIR,—I had the pleasure a few days past of receiving your letter of the 22^d of June & am greatly obliged by your friendly attention to my son. I am sorry that he misunderstood me so far as to request an advance of money from you when you could not have funds of mine in your hands. I gave him what I hoped would be sufficient

for all his purposes until he should enter college, but told him, should I be mistaken respecting the amount of his expenditures to apply to you. I did not suspect that his application would be made till the month of August.

The case concerning the securities of the cashier of the Bank goes to the Supreme Court & will probably be reversed. I suppose so, because I conjecture that the practice of banks has not conformed to my construction of the law. The Judge, however, who draws the opinion must have more ingenuity than I have if he draws a good one.

The main question respects the validity of the bond on which the suit was instituted. It was signed at different times and left in possession of the cashier, certainly, I suppose, in the expectation that he would forward it to the proper place. The plea of *non est factum* was put in among other pleas & the plaintiff proved the signature of the obligors & relied on the possession of the bond & the suit on it as evidence to be left to the jury of its delivery & acceptance.

The cause was argued with very great ability, and it was contended that this would not be sufficient in any case, but if in general, not in this case.

I held very clearly that in the case of an individual obligee the evidence would authorize the jury to infer delivery, but not in the case of the Bank of the United States.

The incorporating act requires that before the cashier shall be permitted to enter on the duties of his office he shall give bond with security to be approved by the board of Directors for the faithful performance of its duties. I had no doubt that the suit upon the bond was evidence of its acceptance & consequently of its being approved, if that fact could be established by parol evidence, but I was of opinion that it could not be so established. The board of Directors, I thought, could only speak by their record. They cannot speak or act as individuals speak or act. They speak & act by their minutes. Their approbation & acceptance of the bond could not be expressed otherwise than officially on their minutes, & no other evidence than the minutes could establish the fact. I therefore did not permit the bond to go to the jury.

The question was entirely new, & I was at first rather in favour of the plaintiffs. But in so lax a manner was this business conducted as to show very clearly that the cashier was in the full performance of his duty before the bond was executed, & to leave it very doubtful whether the breaches assigned were not committed before the bond passed out of the possession of the cashier. There was reason to believe that it had never been seen by the Board of Directors till he was removed from office, if then. It was impossible not to foresee that if the bond went to the jury questions would immediately arise on the time of its commencing obligation. The date could not be the guide because it

was not executed at its date. If the time when it was signed by the last obligor should be insisted on, it was obvious that it had not then been seen or approved by the Directors, nor was it accepted by them. The delivery therefore could not be complete. If the time when it came to the possession of the Directors were to be taken, it probably never came to their possession. These difficulties produced a close examination of the point, the result of which was a perfect conviction that the minutes of the Board could alone prove the acceptance of the bond. I did not doubt that the board of Philadelphia might have authorized the board at Richmond to accept the bond, but such authority ought to appear by the minutes of the board at Philadelphia.

I shall bow with respect to the judgement of reversal, but till it is given I shall retain the opinion I have expressed.¹

With great & affectionate esteem, I am your

J. MARSHALL.

You alarm me respecting the successor of our much lamented friend.² I too had heard a rumour which I hoped was impossible. Our Presidents, I fear will never again seek to make our department respectable.

The Hon'ble Mr Justice Story. Salem, Massachusetts.

RICHMOND, Decr 9th, 1823.

MY DEAR SIR,—I had the pleasure yesterday of receiving your letter of the 24th ultimo & congratulate you on passing through your circuit in such good health & spirits. Our brother Washington was so unwell as to be under the necessity of adjourning the court at Philadelphia without going through the docket. I am still engaged at this place in a sort of dilatory way, doing very little, and still having something to do. A case was argued yesterday which I would send to the Supreme Court if I could, but I cannot. The *Pilot*, an American vessel was captured by pirates & converted into a piratical cruizer. She was then recaptured by one of our squadron under Commodore Porter after a sharp action. She was brought into Norfolk, libelled as prize, & claimed by the original owner. The attorney for the captors abandoned the claim as prize, and asked salvage. This claim was resisted on the ground that the capture was not within the act of 1800, because that applies only to recaptures from an enemy of the United

¹ This was the case of the *Bank of the United States v. Dandridge* (12 Wheaton's Reports). As he anticipated, Judge Marshall's opinion, when sitting as Circuit Judge, was reversed. The opinion of the majority of the Court was given by Judge Story, and the Chief Justice gave a much longer dissenting opinion.

² Brockholst Livingston, one of the Associate Justices of the Supreme Court, died March 11, 1823. He was succeeded by Smith Thompson. It is not probable that the rumored appointment which so alarmed the Chief Justice was that of Mr. Thompson.

States, not to recaptures from a pirate. It was insisted too that the act of 1819 does not give salvage for a recapture made by a national ship, because although an American vessel recaptured by a merchantman or private vessel is to be brought in, yet such vessel recaptured by a national ship is not to be brought in. As there is no salvage given by statute, the claim, it was said, must rest upon general law. It was admitted that according to that law salvage is due for a vessel recaptured by a private ship, but not for a vessel recaptured by a national ship, because the nation owes protection to all its people, and it is a part of the duty of the national force to afford this protection. In the present case it was one of the objects of the expedition. It was said that the general dicta that salvage is due for recaptures made from pirates must be limited to such as are made by private ships or by the public ships of some other nation than that of the recaptured vessel.

The counsel for the recaptors relied chiefly on the general principle that by the law of nations, or by the general maritime law, salvage is due for all vessels recaptured from pirates.

The District Judge gave salvage, & the owners have appealed. I do not know that the question has ever arisen in any of the courts of the United States. Perhaps your information may be more extensive, and I will thank you to give it to me. If the case has not been decided you will greatly oblige me by your sentiments on it, as I know that you are more *au fait* on these questions than I am. The sooner I hear from you, provided you are satisfied in the case, the better.

I have read the correspondence to which you refer and regret its publication extremely.¹ I feel great respect for Mr Adams, and shall always feel it whatever he may do. The extreme bitterness with which he speaks of honourable men who were once his friends is calculated to mortify and pain those who remain truly attached to him. A comparison of the language he applies to gentlemen of high character in Massachusetts with that which in the early part of the correspondence he applied to those who were always his enemies and gross calumniators, who cannot even now treat him with decency, inspires serious reflections. We can only say, *non est qualis erat*.

I think I can *guess*, although not born north of the Hudson, what you hint at respecting the Presidential election; but I shall be as careful not to commit my *guess* as you are respecting your scheme.

Farewell. Providence, I hope, will continue to take care of us. With affectionate esteem,

I am, dear Sir, your obed^t

J. MARSHALL.

¹ The "Correspondence between the Hon. John Adams, late President of the United States, and the late Wm. Cunningham, Esq., beginning in 1803, and ending in 1812," was published in 1823 "by E. M. Cunningham, son of the late Wm. Cunningham, Esq."

The Hon'ble Mr Justice Story. Salem, Massachusetts.

[RICHMOND, March 26, 1828.]

MY DEAR SIR, — I beg you to accept my portrait for which I sat in Washington to Mr Harding, to be preserved when I shall sleep with my fathers, as a testimonial of sincere and affectionate friendship.¹ The remaining hundred dollars you will be so good as to pay to Mr Harding for the head and shoulders I have bespoke for myself. I shall not wish the portrait designed for myself to be sent to Richmond till I give directions for it to be accompanied by the head Mr Greenough² means to cast for me. You will very much oblige me by letting me know when those castings are accomplished what is the price at which he sells them, because if they should not be held higher than I think my head worth I may probably order more than one of them.

I hope Mr^s Story & yourself have had a pleasant journey & have found your little family in perfect health. I congratulate you both on this anticipated happiness. I had a pleasant sail through a smooth sea to Norfolk & thence to Richmond. I have seen scarcely any person out of my own family since my return, but, if I may credit appearances, there is rather a more stormy and disturbed atmosphere on land than I encountered in the Bay. The spirit of party is understood to be more bitter than I could have supposed possible. I am, however, on the wing for my friends in the upper country, where I shall find near and dear friends occupied more with their farms than with party politics.

I had one of your fish dressed yesterday, and found it excellent.

I am, dear Sir, with real regard and esteem,

Your obed^t

J. MARSHALL.

I had nearly forgotten to say that I received to-day under cover from Mr Webster Mr McGruder's letter announcing the loss of my surtout. I thank for the trouble you have taken as much as if it had terminated more successfully.

Once more farewell.

Your

J. M.

The Hon'ble Mr Justice Story. Salem, Massachusetts.

RICHMOND, May 1st, 1828.

MY DEAR SIR, — Yesterday on my return from a visit to my sons in our upper country I had the pleasure of receiving your very friendly

¹ This portrait is now hung in the Dining Hall at Cambridge, having been given by Judge Story's will to the President and Fellows of Harvard College.

² It is stated in Appleton's Cyclopædia of American Biography (vol. ii. p. 757) that Horatio Greenough made a marble bust of Judge Marshall; and in a letter to his brother Henry, dated February 28, 1828, he writes: "I had this morning the first sitting from Chief Justice Marshall. Judge Story says that any one would recognize my sketch; that it is capital." See "Letters of Horatio Greenough to his Brother Henry Greenough," p. 31.

letter of the 10th of April. The kind partiality you have always manifested towards me has been ever most grateful to my heart. No gratification is more pure or more exalted than the regard of those we esteem. I received at the same time a letter from M^r Harding dated the 6th of April informing that he should leave Washington within a fortnight from that day, and requesting me to direct the disposition he should make of the portrait I had requested him to draw for my use. As he had left Washington ten days before his letter reached me I could give no directions on the subject and have not written to him. I presume he is in Boston. Will you have the goodness to let him know that his letter was not answered because it was not received, & that I will thank him if he has left the portrait in Washington to let me know with whom it remains, and if it is with him to deliver it to you. I shall rely on you to give it house room till the representation of the Court in costume is prepared when I must make arrangements to have both, together with the head in plaister, conveyed to this place. I believe I said something to you on this subject in my last letter.

I was a good deal provoked at the publication in the *Marylander*, not because I have any objection to its being known that my private judgement is in favor of the re-election of M^r Adams, but because I have great objections to being represented in the character of a furious partisan. Intemperate language does not become my age or office, and is foreign from my disposition and habits. I was therefore not a little vexed at a publication which represented me as using language which could be uttered only by an angry party man. As I knew I had never conversed on the subject except confidentially with friends I was persuaded that the communication to the printer could not have been direct, and that it had been a good deal metamorphosed in its journey to him. On my late visit to the upper country I was informed that this was the fact. One of my nephews for whom I feel great regard and who was on the Adams convention was asked in Baltimore by a gentleman of that place if he knew my opinion respecting the candidates for the Presidency. On his answering that I seldom mentioned the subject, but that he had heard me say that though I had not voted for upwards of twenty years I should probably vote at the ensuing election, the gentleman observed that he supposed I should consider the election of Jackson as a virtual dissolution of the government. This observation was received with a smile & some light expression of its extravagance, and upon the strength of this circumstance a communication was made which produced the publication in the *Marylander*. On seeing it my nephew wrote to a friend in Baltimore requesting him to enquire whether it was made on the strength of his communication, and if it was, enclosing a publication denying that he had ever authorized it or had ever heard me use such language as had been ascribed to me. The editor

of the Marylander was in a situation when the letter was received to prevent the enquiry which was directed, and his death has put an end to that part of the business. My nephew stated the affair to me while in the mountain country, and was too much chagrined for me to add to his mortification by blaming him. I must bear that newspaper scurrility which I had hoped to escape, and which is generally reserved for more important personages than myself. It is some consolation that it does not wound me very deeply.

I am glad to hear that M^{rs} Story and yourself had a prosperous journey homeward. The epidemic you mention has prevailed extensively in Richmond, and has in some instances been fatal. I am happy to hear that it has not been so in your family.

You will soon be on your spring circuit, if [not] already engaged on it. I wish you a pleasant [*torn*], and am with affection and esteem,

Your

J. MARSHALL.

The Hon'ble M^r Justice Story. Salem, Massachusetts.

RICHMOND, Oct. 29th, 1828.

MY DEAR SIR, — I have just finished the perusal of your centennial discourse on the first settlement of Salem, and while fresh under its influence take up my pen to thank you for the pleasure it has given me. You have drawn a vivid picture, and, I believe, a faithful likeness of those extraordinary men who first peopled New England, and my feelings as well as my judgement have accompanied you in your rapid sketch of the character and conduct of their descendants. I wish the admonitory part may have its full effect on others as well as on those to whom it was particularly addressed. Some of our southern friends might benefit from the lesson it inculcates.

But I have been still more touched with your notice of the red man than of the white. The conduct of our forefathers in expelling the original occupants of the soil grew out of so many mixed motives that any censure which philanthropy may bestow upon it ought to be qualified. The Indians were a fierce and dangerous enemy whose love of war made them sometimes the aggressors, whose numbers and habits made them formidable, and whose cruel system of warfare seemed to justify every endeavour to remove them to a distance from civilized settlements. It was not until after the adoption of our present government that respect for our own safety permitted us to give full indulgence to those principles of humanity and justice which ought always to govern our conduct towards the aborigines when this course can be pursued without exposing ourselves to the most afflicting calamities. That time, however, is unquestionably arrived, and every oppression now exercised on a helpless people depending on our magnanimity and justice for the

preservation of their existence impresses a deep stain on the American character. I often think with indignation on our disreputable conduct (as I think) in the affair of the Creeks of Georgia; and I look with some alarm on the course now pursuing in the Northwest. Your observations on this subject are eloquent and are in perfect accordance with my feelings. But I turn with most pleasure to that fine passage respecting the Lady Arabella Johnson. I almost envy the occasion her sufferings and premature death have furnished for bestowing that well merited eulogy on a sex which so far surpasses ours in all the amiable and attractive virtues of the heart, — in all those qualities which make up the sum of human happiness and transform the domestic fireside into an elysium. I read the passage to my wife who expressed such animated approbation of it as almost to excite fears for that exclusive admiration which husbands claim as their peculiar privilege. Present my compliments to M^{rs} Story and say for me that a lady receives the highest compliment her husband can pay her when he expresses an exalted opinion of the sex, because the world will believe that it is formed on the model he sees at home.

I have read with much interest the character you have drawn of our deceased friend and brother, the lamented Judge Trimble.¹ Most richly did he merit all you have said of him. His place, I fear, cannot be completely supplied. I was desirous of having the character republished in our papers, but was restrained by the flattering introduction of my name. My modesty was alarmed by the apprehension that the request for its publication might be ascribed as much to vanity as to my deep feeling for departed worth.

Most cordially do I congratulate you on the appointment of our friend Hopkinson.²

With affectionate esteem, I am, dear Sir,

Your

J. MARSHALL.

The Hon'ble Mr Justice Story. Salem, Massachusetts.

RICHMOND, June 11th, 1829.

MY DEAR SIR, — I had the pleasure some time past of receiving your letter inclosing a copy of that which transmitted a copy of his commission to our friend Judge Hopkinson. I am the more gratified by the flattering terms of the letter when I recollect by whom the copy

¹ Robert Trimble, of Kentucky, was appointed one of the Justices of the Supreme Court May 9, 1826, and died August 25, 1828. Judge Story's sketch of his character was printed in the "Columbian Centinel" of September 17. See Story's "Life and Letters of Joseph Story," vol. i. pp. 541-543.

² Joseph Hopkinson was appointed in 1828, by President J. Q. Adams, Judge of the District Court for the Eastern District of Pennsylvania, and held the office until his death in January, 1842.

was taken. I am sure you told her in my name by anticipation how much I was delighted by such a letter copied by such a hand.

I am almost ashamed of my weakness and irresolution when I tell you that I am a member of our convention.¹ I was in earnest when I told you that I would not come into that body, and really believed that I should adhere to that determination; but I have acted like a girl addressed by a gentleman she does not positively dislike, but is unwilling to marry. She is sure to yield to the advice and persuasion of her friends.

I wrote from Washington signifying my wish not to be brought forward, and desiring that the attention of the district might be directed to some other person, but the letter was mentioned to very few, and those few advised that it should not be communicated, but that I should remain free to act on my return as my judgement might direct.

The committee appointed at this place to nominate had written to me at Washington, but the letter reached that place the day of my departure or the day afterwards, and of course was not received. A duplicate was transmitted to me a few days after my arrival in Richmond, which I answered immediately, acknowledging my grateful sense of the favorable opinion which had led to my nomination, but declaring my unwillingness to become a member of the convention, and declining the honour intended me. The committee would not act upon this letter; but in the mean time it was rumoured in the town that I declined being voted for, in consequence of which I was pressed so earnestly on the subject by friends whose opinions I greatly value that my resolution began to stagger. It was said that whether I took any part in debate or not, my services were counted on as of real importance. The committee addressed a second letter to me containing assurances of their anxious desire that I would reconsider the resolution I had formed, and assent to what they were certain was the general wish of the district. As is usual I yielded and gave a reluctant consent to serve if I should be elected. Such is the history of the business. I assure you I regret being a member, and could I have obeyed the dictates of my own judgement I should not have been one. I am conscious that I cannot perform a part I should wish to take in a popular assembly; but I am like Molière's *Médecin malgré lui*.

The body will contain a great deal of eloquence as well as talent, and yet will do, I fear, much harm with some good. Our freehold suffrage is, I believe, gone past redemption. It is impossible to resist the influence, I had almost said contagion of universal example.

With great esteem and affection,

I am, my dear Sir, your obed^t

J. MARSHALL.

¹ The Convention for revising the Constitution of Virginia.

The Hon'ble M^r Justice Story. Salem, Massachusetts.

RICHMOND, July 3^d, 1829.

MY DEAR SIR, — Your favor of the 23^d of June accompanying M^r Brazer's discourse at the interment of Doctor Holyoke, and your very interesting address to the bar of Suffolk at their anniversary on the 4th of Sept^r, 1821, reached me a few days past.¹ It is impossible to read the first without strong impressions of the worth both of Doctor Holyoke and M^r Brazer.

Your address was of course read with pleasure and attention. It takes, as is your custom, a very comprehensive view of the subject, of the law and of the distinguished persons who have adorned it. It presents strong incentives to exertion.

Directly after writing my last letter I saw your appointment to the Dane Professorship, and anticipated your acceptance of it. The situation imposes duties which I am sure you will discharge in a manner useful to others and conducive to your own fame. I did not, however, anticipate that the labour would immediately press so heavily on you as your letter indicates. Four octavo volumes in five years is a heavy requisition on a gentleman whose time is occupied by duties which cannot be neglected. I am confident that no person is more equal to the task than yourself, but I cannot help thinking that the publication may be postponed to advantage. I presume the work will be in the form of lectures, and I suspect you will find it advisable to postpone the publication of them till they have been revised for a second course. Precipitation ought carefully to be avoided. This is a subject on which I am not without experience.

I hope your attention has been turned to the two great cases we have under advisement. I wish you would place your thoughts upon paper. I am the more anxious about this as I have myself not considered them, and fear that I shall be prevented from bestowing on them the attention they ought to receive. M^r Thompson, I presume, will look thoroughly into that from New York and be prepared in it, but if the majority of the Court should not concur with him it will be necessary that preparation should be made for such an event.

We shall have a good deal of division and a good deal of heat, I fear, in our convention. The freehold principle will, I believe, be lost. It will, however be supported with zeal. If that zeal could be successful I should not regret it. If we find that a decided majority is against retaining it I should prefer making a compromise by which a substantial property qualification may be preserved in exchange for it. I fear the excessive [*torn*]cident to victory after a hard fought battle continued to the last extremity may lead to universal suffrage or something very near it. What is the prop[erty] qualification for your

¹ See note, *ante*, p. 330.

Senate? How are your Senators apportioned on the State? And how does your system work?

The question whether white population alone, or white population compounded with taxation, shall form the basis of representation will excite perhaps more interest than even the freehold suffrage. I wish we were well through the difficulty. Farewell. I am, my dear Sir, affectionately & truly

Your

J. MARSHALL.

The Hon'ble Mr Justice Story. Cambridge, Massachusetts.

RICHMOND, Sept^r 30th, 1829.

MY DEAR SIR, — I have read with great pleasure your discourse pronounced as Dane Professor of Law in Harvard University. It is in your best style of composition.

You have marked out for yourself a course of labour which is sufficiently arduous; but I believe you love to struggle with difficulty, and you have generally the good fortune or merit to overcome it. At seventy-four you will find indolence creeping over you. But we will not anticipate evil.

You have not spared the students of law more than the Professor. You have prescribed for them a most appalling course. Our southern youths would stumble at the threshold and think such a task too formidable for even a commencement. You Yankees have more perseverance, or think more justly on the proposition that he who attempts much may accomplish something valuable, should his success not be complete.

I hope I shall live to read your lectures. They will form an exception to the plan of life I had formed for myself to be adopted after my retirement from office, that is to read nothing but novels and poetry.

Our convention approaches. I still feel vain regrets at being a member. The chief though not the only cause of these regrets is that *non sum qualis eram*. I can no longer debate. Yet I cannot apply my mind to any thing else.

Farewell, — with affectionate esteem I remain your

J. MARSHALL.

The Hon'ble Mr Justice Story. Cambridge, Massachusetts.

RICHMOND, October 15th, 1830.

MY DEAR SIR, — Ascribe my delay in thanking you for the sermon drawing the character of your late Chief Justice,¹ and for the excellent

¹ A Sermon on the Decease of Chief Justice Isaac Parker by John Gorham Palfrey. Appended to it is "a sketch of Judge Parker's character as an advocate and lawyer," "by an eminent Judge of the Supreme Court of the United States."

addendum you have made to it, to the indolence and negligence of age, or to any cause rather than to indifference to any mark of your kind recollection. I have read both with attention and with real gratification. I had formed a high opinion of the late Chief Justice Parker from what I had heard of him, especially from yourself, but that opinion was certainly raised by the more minute detail of his qualities and by the abridged biography contained in the work for which I am thanking you. My regret for the loss of this estimable gentleman was much enhanced by the fear that Massachusetts might be able to supply his place by seducing from the Federal bench a gentleman whose loss would be irreparable. I felicitate myself and my country on the disappointment of this apprehension.

While I am acknowledging favors I thank you also for a box of fish received the other day. I have not yet tasted them, but have no doubt of their excellence, and shall not be long in putting it to the test.

I find our brother McClean could not acquiesce in the decision of the Court in the Missouri case.¹ I am sorry for this, and am sorry too to observe his sentiments on the 25th sec. of the judicial act. I have read in the last volume of M^r Peters the three dissenting opinions delivered in that case, and think it requires no prophet to predict that the 25th section is to be repealed, or to use a more fashionable phrase to be nullified by the Supreme Court of The United States. I hope the case in which this is to be accomplished will not occur during my time, but accomplished it will be at no very distant period.

I am mortified at the number of causes left undecided at the last term. I am still more mortified at the circumstance that I am unable to prepare opinions in them. The cases of Soulard and of Smith I suppose must wait for additional information or for the certainty that none is to be obtained, but I had hoped to prepare something in the lottery case. I am chagrined at discovering that I have left the statement of the case behind me. It is also cause of real surprise as well as chagrin to find that the case of Cathcart and Robertson was not decided. I really thought the Court had made up an opinion on it.

I have read with peculiar pleasure the letter of M^r Madison to the Editor of the North American Review.² He is himself again. He avows the opinions of his best days, and must be pardoned for his

¹ John McLean became an Associate Justice of the Supreme Court in January, 1830. The case here referred to was *Craig v. Missouri* (4 Peters, 410), in which for the first time the Court considered what was meant by the prohibition on the States to emit bills of credit. The subject was closely connected with the validity of the issues of the State banks. The views of Judge McLean finally prevailed.

² Printed in the "North American Review" for October, 1830, at the end of Mr. Everett's article on the debate in the Senate of the United States on Mr. Foot's Resolution.

oblique insinuations that some of the opinions of our Court are not approved. Contrast this delicate hint with the language M^r Jefferson has applied to us. He is attacked with some bitterness by our Enquirer, who has arrayed his report of 1799 against his letter. I never thought that report could be completely defended; but M^r Madison has placed it upon its best ground, that the language is incautious, but is intended to be confined to a mere declaration of opinion, or is intended to refer to that ultimate right which all admit, to resist despotism, a right not exercised under a constitution, but in opposition to it.

Farewell, — with the best wishes for your happiness, I am yours affectionately.

J. MARSHALL.

The Hon'ble M^r Justice Story. Cambridge near Boston.

RICHMOND, May 3^d, 1831.

MY DEAR SIR, — By the schooner King I send you a barrel containing a few hams which are to be deposited for you with Fisher and Power of Boston. As the address is marked on the cask I hope they will reach you in safety, and will be found reasonably well flavoured.

What do the wise men in the East say to the *tabula rasa* which is made in the cabinet? Our quid nuncs were astonished at first, but soon discovered that the really voluntary resignations were proofs of unparalleled magnanimity and patriotism, and that those which were compulsory were quite *comme il faut*. This is not only as it should be, but as it always will be.

I am apprehensive that the revolutionary spirit which displayed itself in our circle will, like most other revolutions, work inconvenience and mischief in its progress. I believe M^r Brown does not count on boarding the Judges next winter; and if any other arrangement is made 't is entirely unknown to me.¹ We have like most other unquiet men, discontented with the things that are, discarded accommodations which are reasonably convenient without providing a substitute. We pull down without enquiring how we are to build up. The matter rests I understand with our younger brother, and he has probably committed it to some other person. If he had made an arrangement we should, I presume, have heard something about it. I think this a matter of some importance, for if the Judges scatter ad libitum the docket, I fear, will remain quite compact, losing very few of its causes; and the few it may lose will probably be carried off by seriatim opinions. Old men, however, are timid, and I hope my fears may be unfounded.

I sent you some time past a copy of Algernon Sidney. It is rather

¹ At this period the Justices of the Supreme Court were not accompanied by their families when they went to Washington, but had rooms together in some private boarding-house, apparently for greater convenience in consultation.

antediluvian, but you expressed a wish to see it. The writer is among our ablest men.¹ Most of his friends have been classed among the Jacksonians, but I think their hostility to M^r Adams rather than their affection for General Jackson has arranged them under his banners.

The world has been so convulsed by peace that I suspect it must have war in order to be made quiet. Materials in abundance have been prepared for a general conflagration, and unless the mass of debts operates as an extinguisher I perceive nothing which can prevent the spread of the flame. I am quite in amaze at the reform in Great Britain, and can come to only one conclusion, which is that I know nothing about it, and can form no opinion at all satisfactory even to myself. The great teacher, experience, can alone inform us what is best for themselves and for the world.

I presume you are engaged on your circuit. I set out the last of this week. Farewell, with every wish for your happiness, I am yours truly.

J. MARSHALL.

The Hon'ble M^r Justice Story. Cambridge, Mass.

RICHMOND, June 26th, 1831.

MY DEAR SIR, — I have received your two letters of the 25th & 31st of May and have adopted your opinion respecting the admiralty jurisdiction, though in doing so I have reversed the decree of my brother Barbour. I felt some doubt whether the General Smith was not shaken by the case of Ramsay v. Allyne, in which the court supposed that the note certainly ousted the admiralty of its jurisdiction, without deciding whether independent of the note jurisdiction would have existed. I think there is a good deal of force in the argument of Wirt and Meredith that the original cause of action did not merge in the note. However, I have maintained the jurisdiction.

I am greatly perplexed about our board for the next winter. You know what passed while you were with us, and how much discontent was expressed at all previous arrangements. I was unwilling to say any thing for two reasons. Being at any rate a bird of passage, whose continuance with you cannot be long, I did not chuse to permit my convenience or my wishes to weigh a feather in the permanent arrangements of my brethren. But in addition, I felt serious doubts, although I did not mention them, whether I should be with you at the next term. What I am about to say is, of course, in perfect confidence which I would not breathe to any other person whatever. I had unaccountably calculated on the election of P—t taking place next fall,

¹ The reference is probably to "The Letters of Algernon Sidney, in Defence of Civil Liberty and against the Encroachments of Military Despotism," which were written by Benjamin Watkins Leigh, and first printed in the "Richmond Enquirer" in 1818-19. They were republished in 1830, in an octavo pamphlet.

and had determined to make my continuance in office another year dependent on that event. You know how much importance I attach to the character of the person who is to succeed me, and calculate the influence which probabilities on that subject would have on my continuance in office. This, however, is a matter of great delicacy on which I cannot and do not speak. My erroneous calculation of the time of election was corrected as soon as the pressure of official duty was removed from my mind, and I had nearly decided on my course, but recent events produce such real uncertainty respecting the future as to create doubts whether I ought not to await the same chances in the fall of 32 which I had intended to await in the fall of 31. This obliges me to look forward to our quarters for the next winter. This uncertainty as to my being with you which had prevented my taking any part in our previous consultations on this subject, if consultations they may be called, prevented my saying any thing on the last day. It seemed then to be conclusively determined that we did not remain with Brown, and I understood that Judge Baldwin would provide lodgings. He said something of relying on his sister to select them, to which I was perfectly agreed. He was of course to communicate anything which might be done. Not having heard a syllable from him I conclude nothing has been done. We cannot, however, do anything for ourselves till we know that he does nothing for us. In this state of uncertainty I have thought of writing to him when he comes to Philadelphia in the fall, and if he has made no arrangement to provide for ourselves. You, Judge Thompson, Judge Duval, and myself may, I hope, continue to mess together. Brother Duval must be with us or he will be unable to attend consultations. I have supposed you may mention this subject to our brother Thompson, and if he concurs in it write to brother Duval to engage the old rooms for us at Brown's or to locate us at some other place in the neighborhood. This, however, must depend on the intelligence to be obtained from Judge Baldwin.

I hear with feelings of deepest sympathy the family affliction you have sustained, and participate sincerely in the grief which both M^{rs} Story and yourself must feel. There are wounds into which time, and time alone, can pour its healing balm. Consolation is vain. I thank you for the verses which the melancholy occasion has produced. They are replete with the deep parental feeling it was calculated to call forth.¹

You ask me if M^{rs} Marshall and myself have ever lost a child. We have lost four, three of them bidding fairer for health and life than any that have survived them. One, a daughter about six or seven was brought fresh to our minds by what you say of yours. She was one of

¹ Judge Story's youngest child died in May, 1831. The verses referred to are printed in Story's "Life and Letters of Joseph Story," vol. ii. pp. 57-59.

the most fascinating children I ever saw. She was followed within a fortnight by a brother whose death was attended by a circumstance we can never forget. When the child was supposed to be dying I tore the distracted mother from the bedside. We soon afterwards heard a voice in the room which we considered as indicating the death of the infant. We believed him to be dead. [I went] into the room and found him still breathing. I returned [and] as the pang of his death had been felt by his mother and [I] was confident he must die, I concealed his being alive and prevailed on her to take refuge with her mother who lived the next door across an open square from her. The child lived two days, during which I was agonized with its condition and with the occasional hope, though the case was desperate, that I might enrapture his mother with the intelligence of his restoration to us. After the event had taken place his mother could not bear to return to the house she had left and remained with her mother a fortnight. I then addressed to her a letter in verse in which our mutual loss was deplored, our lost children spoken of with the parental feeling which belonged to the occasion, her affection for those which survived was appealed to, and her religious confidence in the wisdom and goodness of Providence excited. The letter closed with a pressing invitation to return to me and her children. This letter has been delayed for the purpose of sending you a copy of what I wrote. But 't is lost.

Your affectionate

J. MARSHALL.

The Hon'ble Mr Justice Story. Cambridge, Massachusetts.

PHILADELPHIA, Oct. 12th, 1831.

MY DEAR SIR, — I had the pleasure of receiving in the course of the mail your very friendly letter of the 6th.

I have been under the doctor ever since my return in May from North Carolina and have been regularly growing worse. My disease, for which I have to blame myself, was mistaken. My physician suspected it, but I was so confident against him that he never made the experiments necessary to establish the fact. At length I suffered so much pain and became so alarmed as to determine on a visit to this place. I have been here a fortnight. Doctor Physic, whom I consulted immediately, proceeded very circumspectly.¹ He made some examinations which led to the belief that I had probably stone in the bladder, and on applying the sound at different intervals has decided

¹ Dr. Philip S. Physick (born in Philadelphia July 7, 1768, died there December 15, 1837) was at this time the most eminent surgeon in Philadelphia, if not in the United States. In a memoir of Dr. Physick by Dr. Randolph of Philadelphia (*Medical Examiner*, vol. ii. pp. 280, 281) there is an interesting account of the operation on Chief Justice Marshall.

that I have one. The usual operation was to have been performed a day or two past, but the rainy weather has confined the doctor, whose health is extremely delicate, and I must wait till we see the return of the sun. We have now the promise of a fair day, and should our anticipations be realized I count on going through the operation to-morrow.

I place the most entire confidence in Doctor Physic. Never was man better calculated to inspire confidence in a patient than he is. His profound attention to the case and his patient investigation of the symptoms, added to his very high reputation for skill as a surgeon, produce a firm conviction that nothing will be omitted which can contribute to my recovery. I look with impatience for the operation.

Our brother Baldwin is here. He seems to have resumed the dispositions which impressed us both so favorably at the first term. This is as it should be. He spoke of you in terms not indicating unfriendliness. He mentioned our next winter's accommodations in such a manner as to show his decided preference for Mr^s Peyton's, but he has not engaged the apartments. We must make some positive engagement before the meeting of Congress or we shall separate, and each be under the necessity of providing for himself. I should have urged an immediate decision had I not been restrained by some communications which have passed between Mr^r Peters and Mr^r Ringold. When Mr^r Peters mentioned that subject to me I expressed my decided approbation to the proposal of our old friend to receive us in his house provided it was agreeable to our brothers. On reflection I suspect the situation of the house, between the palace and Georgetown, will not be to your mind nor to the mind of the other Judges. I shall suggest this to Peters. Should this conjecture be well founded, I think we shall do well to engage immediately with Mr^s Peyton.

On the most interesting part of your letter I have felt, and still feel, great difficulty. You understand my general sentiments on that subject as well as I do myself. I am most earnestly attached to the character of the department, and to the wishes and convenience of those with whom it has been my pride and my happiness to be associated for so many years. I cannot be insensible to the gloom which lours over us. I have a repugnance to abandoning you under such circumstances which is almost invincible. But the solemn convictions of my judgement sustained by some pride of character admonish me not to hazard the disgrace of continuing in office a mere inefficient pageant.

In the course of the summer I resorted to different courses of medicine none of which were of any service to me, but which had a sensible influence on my general health. My nerves, my digestion, and my head were seriously affected. I had found myself unequal to the effective consideration of any subject, and had determined to resign at the close

of the year. This determination, however, I kept to myself, being determined to remain master of my own conduct. I at length resolved to take no more medicine, after which I was slowly restored to my former self. This occurred about the time of my leaving Richmond for this place, and notwithstanding the pain I feel, I recover strength daily. I have therefore determined to meet you at the next term, and to postpone anything definitive till then.

Present my most respectful good wishes to M^{rs} Story. I indulge the hope that both of you have recovered firmness enough to receive the dispensations of Providence, however severe, with a mindfulness of the great duties which still remain to be performed.

With esteem and affection yours truly,

J. MARSHALL.

The Honble. Mr Justice Story. Cambridge, Massachusetts.

PHILADELPHIA, NOV^r 10th, 1831.

MY DEAR SIR, — I learn with much regret from our friend M^r Peters that you have been seriously indisposed. I fear your various duties confine you too closely. You must, my dear Sir, be careful of your health. Without your vigorous and powerful cooperation I should be in despair, and think the “ship must be given up.”

I have had a most tedious confinement. At length, however, I leave my bed and walk across my room. This I do with a tottering feeble step. It is, however, hourly improving and I hope next week to take the boat for Richmond in time to open my court on the 22^d. Doctor Physick has added to consummate skill the most kind and feeling attention. I shall never forget him.

There has been some difficulty about our next winter's arrangement. You perceive I speak confidently of meeting you. At length it seems fixed that we are to quarter with Ringold. M^r Peters has written you all about it. I was a little apprehensive that you would be unwilling to locate yourself so far out of the centre of the city, but your other friends seem to think you will be greatly pleased. I am told that our accommodations as to rooms will be convenient, and as to everything else you know they will be excellent. M^r Johnson, I am told, will quarter by himself, and our brother M^cLain will of course preserve his former position. The remaining five will, I hope, be united.

The Circuit Court is in session in Philadelphia. Our brother Baldwin has called on me frequently. He is in good health and spirits, and I, always sanguine, hope that the next term will exhibit dispositions more resembling those displayed in the first than the last.

I am at present and have been all the summer very unfit for serious business. I was not one moment free from pain from the time I parted with you till the operation was performed which extracted about 1000

calculi. You may judge how much I suffered. The pain increased daily and disqualified me for serious thought. Thank Heaven I have reason to hope that I am relieved. I am, however, under the very disagreeable necessity of taking medicine continually to prevent new formations. I must submit too to a severe and most unsociable regimen. Such are the privations of age. You have before you, I trust, many, very many years unclouded by such dreary prospects.

Farewell. You have the best wishes of him who is with affectionate esteem

Your

J. MARSHALL.

The Honble. Mr Justice Story. Cambridge, Massachusetts.

RICHMOND, August 2d, 1832.

MY DEAR SIR, — I am greatly in your debt, more especially for the first volume of the American Library of Useful Knowledge, and have so long neglected to acknowledge my obligations that I am not sure I should not, according to the practice of insolvents, have put it off altogether, had I not been placed in a situation to ask further assistance from you.¹

Congress has passed an act to increase and improve its law library, a copy of which has just been transmitted to me by the librarian. It appropriates 5000 \$ for the present year, to be expended in the purchase of law books by the librarian, in pursuance of such catalogue as shall be furnished him by the Chief Justice of The United States. I wish it had been "as shall be furnished him by Mr Justice Story." However, we must correct this erratum as well as we can.

As I know your appetite for labor, I feel the less compunction in offering you a very large share of this. Indeed, if you can take the whole I can readily spare it. Will you then transmit me a list of such law books as you would wish (or rather, as ought in your judgement) to be added to the law library. You probably recollect enough of them without seeing a catalogue to supply a list of those which are wanting. Say if you think there ought to be duplicates of particular books.

The librarian informs me that he has already ordered a continuation of those British reports which are in progress of which he has the beginning volumes, and of the American reporters.

I ascribe the honor now done me to our friend Peters, and therefore think I may ask him also for aid in my difficulty. I shall probably write to him.

We are up to the chin in politics. Virginia was always insane

¹ The volume referred to was published in 1831, and contained among other essays a Discourse by Judge Story on "Developments of Science and Mechanic Art," delivered before the Boston Mechanics' Institute, and reprinted in Story's "Miscellaneous Writings."

enough to be opposed to the bank of The United States, and therefore hurrahs for the veto. But we are a little doubtful how it may work in Pennsylvania. It is not difficult to account for the part New York may take. She has sagacity enough to see her interest in putting down the present bank. Her mercantile position gives her a controul, a commanding controul, over the currency and the exchanges of the country, if there be no bank of The United States. Going for herself she may approve this policy; but Virginia ought not to drudge for her benefit.

We show our wisdom most strikingly in approving the veto on the harbor bill also. That bill contained an appropriation intended to make Richmond a seaport, which she is not at present, for large vessels fit to cross the Atlantic. The appropriation was whittled down in the House of Representatives to almost nothing, in consequence of the total misunderstanding of the case by Mercer.¹ Yet we wished the appropriation because we were confident that Congress when correctly informed, would add the necessary sum. This too is vetoed; and for this too our sagacious politicians are thankful. We seem to think it the summit of human wisdom, or rather of American patriotism, to preserve our poverty.

Our great political and party guide, The Enquirer, has not been able to make Mr Barbour pull in the traces.² He has broke loose and is fairly in the field. I do not precisely know how this will work. He is supported by the most violent of the state right party, who are also strong for the existing President. There might be some difficulty in managing this tangled business were not the Jackson majority so overwhelming as to leave his friends nothing to fear from a division. Some of the friends of Barbour are secretly for Calhoun; but though attached to nullification in principle they dare not favor the name. Besides the basement story is so firm that those who are supported on it dare not totter.

Things to the South wear a very serious aspect. If we can trust appearances the leaders are determined to risk all the consequences of dismemberment. I cannot entirely dismiss the hope that they may be deserted by their followers, — at least to such an extent as to produce a pause at the Rubicon. They undoubtedly believe that Virginia will support them. I think they are mistaken both with respect to Virginia and North Carolina. I do not think either State will embrace this mad and wicked measure. New Hampshire and Maine seem to belong to the tropics. It is time for New Hampshire to part with Webster and Mason. She has no longer any use for such men.

¹ Charles F. Mercer was at this time a member of the House of Representatives, from Virginia.

² John S. Barbour was a member of the House of Representatives, from Virginia, from 1823 to 1833.

I am just preparing for my usual excursion to the mountains. Would that I could meet you there. It would secure you from the cholera. Our whole seaboard will, I fear, be overrun with it. In New York it has, I perceive, been carried to the western frontier. It is too visiting our lakes. You are surrounded by it. That Providence may protect us, especially Boston and Richmond, is the earnest prayer of your truly affectionate

J. MARSHALL.

The Honble. Mr Justice Story. Cambridge, Massachusetts.

RICHMOND, September 22^d, 1832.

MY DEAR SIR, — I am greatly indebted to you for your favor of the 14th. Without your assistance I should have found it impossible, or at least very difficult, to comply with the duty assigned me by Congress. I have given you a great deal of trouble, which I regret, — the less because you love law and love labor. Forty years hence your passion for the one and the other may be somewhat diminished.

I have curtailed your list of books very much for two reasons. One, that by far the greater number of those you have mentioned are already in the library, and I am unwilling to exhaust the fund by procuring duplicates; the other, that we may supply what is required by a better selection of duplicates when we meet this winter, if we should meet, and shall have the advantage of knowing precisely how much money remains to be employed. I have said nothing about the American reports, because I understand from the librarian that he has already directed all of them to be purchased. In my letter inclosing the list I have said that I so understand his communication, and have requested, if I have misunderstood him, that he will correct the error by purchasing all the American reports not in the library. This is a fund of information on which the Supreme Court must be always at liberty to draw ad libitum.

I am very much gratified at hearing that you are so near completing your course on constitutional law, and enriching the political and legal literature of your country with it. The task was arduous, but not above your strength, and you have engaged in it with hearty good will. I anticipate much pleasure as well as information from perusing the work, and can assure you in anticipation that I shall not be among the growlers you may expect to hear. I shall not be among those who bring on you the charge of "*apostacy*" and *ultraism*. I shall like to see how in your quotations from the sage you mention you imitate the bee in extracting honey from poison. I have no doubt, however dexterous the operation, that you will be well stung in requital for your skill and industry.

If the prospects of our country inspire you with gloom how do you

think a man must be affected who partakes of all your opinions and whose geographical position enables him to see a great deal that is concealed from you. I yield slowly and reluctantly to the conviction that our constitution cannot last. I had supposed that north of the Potomack a firm and solid government competent to the security of rational liberty might be preserved. Even that now seems doubtful. The case of the south seems to me to be desperate. Our opinions are incompatible with a united government even among ourselves. The union has been prolonged thus far by miracles. I fear they cannot continue.

Yours affectionately.

J. MARSHALL.

The Honble Mr Justice Story. Cambridge, Massachusetts.

RICHMOND, Dec^r 25th, 1832.

MY DEAR SIR, — I had yesterday the pleasure of receiving your letter of the 19th, inclosing a proof sheet of the titlepage of your great work. I anticipate the pleasure its perusal will give me.

Truely sensible as I am that the commendation bestowed on the Chief Justice, both in the dedication and the preface, greatly transcends his merit, and confident as I am that the judgement of the public will confirm this opinion, I am yet deeply penetrated by the evidence it affords of the continuance of that partial esteem and friendship which I have cherished for so many years, and still cherish as one of the choicest treasures of my life. The only return I can make is locked up in my own bosom, or communicated in occasional conversation with my friends.

I congratulate you on the accomplishment of your purpose and on finishing the Herculean task you had undertaken. I know no person but yourself who could have sustained properly this vast additional labor. I cannot doubt either the ability or correctness with which it is executed, and am certain in advance that I shall read every sentence with entire approbation. It is a subject on which we concur exactly. Our opinions on it are, I believe, identical. Not so with Virginia or the South generally.

Our legislature is now in session, and the dominant party receives the message of the President to Congress with enthusiastic applause. Quite different was the effect of his proclamation. That paper astonished, confounded, and for a moment silenced them. In a short time, however, the power of speech was recovered, and was employed in bestowing on its author the only epithet which could possibly weigh in the scales against the name of "Andrew Jackson," and countervail its popularity. Imitating the Quaker who said the dog he wished to destroy was mad, they said Andrew Jackson had become a Federalist, even an ultra Federalist. To have said he was ready to break down

and trample on every other department of the government would not have injured him, but to say that he was a Federalist, — a convert to the opinions of Washington, was a mortal blow under which he is yet staggering.

The party seems to be divided. Those who are still true to their President pass by his denunciation of all their former theories; and though they will not approve the sound opinions avowed in his proclamation are ready to denounce nullification and to support him in maintaining the union. This is going a great way for them, — much farther than their former declarations would justify the expectation of, and much farther than mere love of union would carry them.

You have undoubtedly seen the message of our Governor and the resolutions reported by the committee to whom it was referred, — a message and resolutions which you will think skillfully framed had the object been a civil war. They undoubtedly hold out to South Carolina the expectation of support from Virginia; and that hope must be the foundation on which they have constructed their plan for a southern confederacy or league. A want of confidence in the present support of the people will prevent any direct avowal in favor of this scheme by those whose theories and whose secret wishes may lead to it; but the people may be so entangled by the insane dogmas which have become axioms in the political creed of Virginia, and involved so inextricably in the labyrinth into which those dogmas conduct them, as to do what their sober judgement disapproves.

On Thursday these resolutions are to be taken up, and the debate will, I doubt not, be ardent and tempestuous enough. I pretend not to anticipate the result. Should it countenance the obvious design of South Carolina to form a southern confederacy, it may conduce to a southern league, — never to a southern government. Our theories are incompatible with a government for more than a single State. We can form no union which shall be closer than an alliance between sovereigns. In this event there is some reason to apprehend internal convulsion. The northern and western section of our State, should a union be maintained north of the Potowmack, will not readily connect itself with the South. At least such is the present belief of their most intelligent men. Any effort on their part to separate from Southern Virginia and unite with a northern confederacy may probably be punished as treason. "We have fallen on evil times."

I thank you for Mr Webster's speech.¹ Entertaining the opinion he

¹ The reference is to a speech delivered by Daniel Webster, at a crowded meeting held in Faneuil Hall, in the forenoon of December 17, 1832. The speech is preserved only in the contemporary newspaper reports, which are said to be somewhat abridged. Referring to President Jackson's Proclamation, Mr. Webster said: "Mr. Chairman, the general principles of the Proclamation are such as I entirely approve. I esteem them to be the true principles of the Constitu-

has expressed respecting the general course of the administration, his patriotism is entitled to the more credit for the determination he expressed at Faneuil Hall to support it in the great effort it promises to make for the preservation of the union. No member of the then opposition avowed a similar determination during the Western Insurrection, which would have been equally fatal had it not been quelled by the well timed vigor of General Washington. We are now gathering the bitter fruits of the tree even before that time planted by Mr Jefferson, and so industriously and perseveringly cultivated by Virginia.

You have doubtless heard from Mr Peters the affliction with which our brother Baldwin has been visited.¹ It cannot, I trust, be of long continuance.

We shall meet once more at Washington. Till then adieu.

Your faithful and affectionate friend.

J. MARSHALL.

The Hon'ble Mr Justice Story. Cambridge, Massachusetts.

RICHMOND, April 24th, 1833.

MY DEAR SIR, — I had the pleasure some days past of receiving your favor of the 10th, but deferred my answer till I could also acknowledge

tion. It must now be apparent to every man, that this doctrine of nullification means resistance to the laws by force. It is but another name for civil war. . . . The President has declared that in meeting the exigencies of this crisis, it is his determination to execute the laws, to preserve the Union by all constitutional means; to arrest, if possible, by moderate, but fair measures, the necessity of a recourse to force; and so to conduct, that the curse impending on the shedding of fraternal blood shall not be called down by any offensive act on the part of the United States. In all this I most cordially concur. . . . I think I can say nothing more satisfactory to this meeting, or to the people of this Commonwealth than that in this way of meeting this crisis I shall give the President my entire and cordial support. . . . Mr. Chairman, in this alternative my choice is made. I am for the Union as it is. I am content with no Government less than that which embraces the whole Four and Twenty States. I am for the Constitution as it is; a Constitution under which those Four and Twenty States have risen to a height of prosperity, unexampled, altogether unexampled, in the history of mankind. I shall support the President in maintaining this Union and this Constitution; and the cause shall not fail for want of any aid, any effort, or any zealous co-operation of mine."

¹ In a letter from Philadelphia, dated December 27, Mr. Webster writes to Judge Story: "I learn that Judge Baldwin has recently manifested an *alienation of mind*. He is now under the hands of medical men & confined to his own house. It is said to be a decided case." Henry Baldwin was born in New Haven, Connecticut, January 14, 1780, appointed by President Jackson an Associate Justice of the Supreme Court in January, 1830, which office he held until his death, at Philadelphia, April 21, 1844. In 1837 he published a voluminous pamphlet entitled "A General View of the Origin and Nature of the Constitution and Government of the United States," in opposition to the constitutional doctrines of Judges Marshall and Story.

your very valuable present which it announced. The Lucy & Abigail is now arrived, and has delivered the package containing your Commentaries and Allison's Sermons, for both of which I thank the donors.

As favors generally beget a disposition to make farther demands on the kindness which confers them, I have ventured to impose on you the trouble of distributing some books among your friends and neighbors to whom I wish to be civil, and have sent a few copies of the *Life of Washington* for that purpose. One you will perceive is for Mr Webster and one for Mr Adams.

In looking over some old papers the other day to determine how many of them were worthy of being committed to the flames, I found a totally forgotten letter (you need not communicate this) from the Historical Society of Massachusetts (or Boston), announcing that I had been elected an honorary member.¹ To show my gratitude for this distinction, I ask them to accept my book, — a poor return indeed, but the only one I can make.

You know what a compliment has been paid me by your Athenæum.²

¹ Judge Marshall was chosen a Corresponding Member of the Historical Society, August 29, 1809. In his letter of acceptance, dated at Richmond, September 20, 1809, he writes to the Corresponding Secretary: "On my return from a tour to our mountains I had the pleasure of finding your letter of the 1st inst., which I hasten to acknowledge. Permit me, Sir, through you to assure the Massachusetts Historical Society that I receive with just sensibility the honor they have been pleased to confer on me in placing me among their corresponding members. Should I be less useful than many of those with whom I am associated, that circumstance, I intreat them to believe, will not be imputable to an improper estimate of the value of the institution, or to a want of respect for those who compose it. For the flattering terms in which you have been pleased to communicate the vote of the Society I pray you to accept my thanks. I shall not be in Washington till February. Perhaps some member of Congress may without inconvenience find room in his baggage for the volume you mention."

In a second letter to Dr. Eliot, dated April 23, 1810, he writes: "I had the pleasure of receiving from Mr. Quincy your letter of the 3^d of Nov^r, together with the two volumes which accompanied it. Permit me to offer my thanks for this attention, & to rely upon it as a pledge that the additional trouble I am about to give you will not be irksome. I could wish to place in my library as many of the volumes of the Collections of the Society as are attainable without inconvenience, but while I solicit your aid in the accomplishment of this wish I must accompany it with a request that you will procure those volumes only, which either by having gone through a second edition or from the numbers of the first are now attainable with entire facility. I would by no means impose on your goodness so far as to render any research necessary. As I neither know the number of volumes which come within the scope of this request nor the price of them, I cannot remit the precise sum which may be necessary, but assure that on the first intimation from yourself this unavoidable omission shall be supplied."

² This reference is apparently to the request of the Trustees of the Boston Athenæum, several years before, that Chief Justice Marshall would sit for his portrait. At a meeting of the Trustees, December 8, 1829, it was "Voted, That the sum of two hundred dollars be appropriated for a portrait of Chief Justice

I have been truly flattered by it, and hope the society will receive my book, — not surely as anything like an equivalent, but as a testimonial of my grateful sense of the favorable sentiment that society has manifested for me. The widow's mite, you know, proved the heart more than the rich gifts of the wealthy.

I wish you to present the copy intended for M^{rs} Ledyard in your very best manner. Tell her how infinitely I feel the obligation she has conferred on me. I was extremely anxious to obtain Allison's Sermons for the reasons I mentioned to you, and you may assure M^{rs} Ledyard that their value is enhanced greatly by the hand which gives them.

In the receipt which I took for the freight Captain Newcomb promised to deliver the box to his owners — I think he calls them George Thresher & Co. or George Thorcher & Co., Long Wharf.¹ Though you New England men, all or most of you, beat copperplate in your writing this captain rather poses me. If I mistake his letters, you, however, probably know his owners.

I am truly delighted that your Commentaries are published. I shall read them eagerly myself, and wish most ardently that they may be read by others to whom they would be still more useful. The copy intended for the schools will do much good where the teachers introduce it. I greatly fear that south of the Potomack, where it is most wanted, it will be least used. It is a Mahomedan rule, I understand, "never to dispute with the ignorant," and we of the true faith in the South abjure the contamination of infidel political works. It would give our orthodox nullifyer a fever to read the heresies of your Commentaries. A whole school might be infected by the atmosphere if a single copy should be placed on one of the shelves of a bookcase.

By the way, since I have breathed the air of James River I think favorably of Clay's bill.² I hope, if it can be maintained, that our manufactures will still be protected by it. Have you ever seen anything to

Marshall by Mr. Harding, and that the Vice-President of this institution be a committee to request Judge Marshall to sit for the same." In his letter to Mr. Harding, the Vice-President, the Hon. Francis C. Gray, writes: "We expect a first-rate picture and hope you will not stint the size nor neglect the execution on any account." The portrait was completed in season to be exhibited for the first time in the Athenæum's Exhibition of Paintings in the summer of 1830. It is the full-length portrait which now hangs in the entrance hall of the Athenæum. A replica or a copy of this portrait was given to the Law School at Cambridge, in 1847, by Professor Greenleaf and others. In the Exhibition of 1830 there was also a portrait of Judge Marshall by Jarvis, which was perhaps the portrait now in the possession of our associate Judge Gray.

A bust of Judge Marshall by John Frazee was given to the Athenæum, in 1835, by the late Hon. Thomas H. Perkins, and was shown in the Athenæum's Exhibition of Sculpture in 1839.

¹ The name of the firm was George Thacher & Co., 31 Long Wharf.

² Mr. Clay's Compromise Tariff Bill was introduced by him in the Senate February 12, 1833.

equal the exhibition in Charleston and in the far South generally? Those people pursue a southern league steadily or they are insane. They have caught at Clay's bill, if their conduct is at all intelligible, not as a real accomodation, a real adjustment, a real relief from actual or supposed oppression, but as an apology for avoiding the crisis and deferring the decisive moment till the other States of the South will unite with them.

With affectionate esteem I am

Your

J. MARSHALL.

The Honble Mr Justice Story. Cambridge, Massachusetts.

RICHMOND, June 3^d, 1833.

MY DEAR SIR, — I am greatly obliged by your letter of the 24th of May.¹ Your conjecture that my enquiry related to L^t Randolph's case was well founded. My letter did not present the difficulty because I did not then comprehend it myself. I wrote it on the bench, just after seeing a paper which stated that a warrant to apprehend him would be demanded. No copy of the laws of Congress was in the courtroom, and the hour for closing the mail was arrived. I wrote without looking at the act. As I anticipated, the application was made on my return, and I felt the difficulty of the case. The reason and policy of apprehending in the States for trial in the District or in a territory are obvious. The fact too that M^r Watkins had been arrested in Pennsylvania for trial in Washington seemed to be a decision, perhaps by a Judge of the United States, in favor of issuing the warrant. Yet the language of the 33^d Sec. appeared to me to limit the power of arrest to cases where the person was arrested for trial before a court which by the Judicial Act has cognizance of the offence. This restraint upon the power is absurd, and could not, I believe, have been imposed, had the Congress perceived its effect, but it cannot be disregarded.

I was truly embarassed, but at length determined not to grant the warrant.

The application was accompanied with an able opinion of the Attorney General in support of it. He founds himself in some measure on proceedings which have taken place in some previous cases, in some measure on the fact that several courts have been constituted since the passage of the act of 1789, and in some measure on the circumstance

¹ Judge Story's letter is not printed in Story's "Life and Letters of Joseph Story," and is not among the Story Papers in the possession of the Historical Society. It was written in answer to a letter from Judge Marshall, dated Raleigh, May 15, 1833, referring to a conversation between Judges Washington and Story respecting "the transfer of a prisoner from one marshal to another on a prosecution in another State," and adding, "Will you, if you have any recollection on this subject, or if you have any fixed judgement on the question, drop me a line which I shall receive on my return to Richmond?"

that all the courts are now in the exercise of jurisdiction under the act of 1802, not under the act of 1789.

These are serious difficulties, but Congress ought to remove them. In the mean time they deserve the consideration of all the Judges.

I rejoice to hear that the abridgement of your Commentaries is coming before the public, and should be still more rejoiced to learn that it was used in all our colleges and universities. The first impressions made on the youthful mind are of vast importance; and, most unfortunately, they are in the South all erroneous. Our young men generally speaking, grow up in the firm belief that liberty depends on construing our constitution into a league instead of a government; that it has nothing to fear from breaking these United States into numerous petty republics. Nothing in their view is to be feared but that bugbear, consolidation; and every exercise of legitimate power is construed into a breach of the constitution. Your book, if read, will tend to remove these prejudices.

Your affectionate friend.

J. MARSHALL.

The Honble. Mr Justice Story. Cambridge near Boston.

RICHMOND, Nov^r 16th, 1833.

MY DEAR SIR, — I thank you for your last letter. Though my thanks are postponed they are not the less sincere. The difficulty I suggested is somewhat changed in its aspect, but is not removed. The attachment was served in my absence, and an application is made to a State Judge for a writ of habeas corpus. It is now under consideration, and will probably be awarded. Whether the motion be granted or rejected, I expect the question to be brought before me, and shall if possible bring it before the Supreme Court or suspend it till the Judges can be consulted.

I have just received a letter from Mr Ringold informing me that he has moved his family out of the city and consequently cannot accommodate us next winter. What is to become of us? What arrangement can be made? Shall we go to the place selected by our brother Johnson near the capitol, or what other location shall we make? If you have held any communication with our brother Thompson since his last and greatest affliction, or can hold any with him, will you consult him and if possible determine on something? I will hold myself in readiness to join you anywhere. If you fix on any place, let me know it. If you do not, then say where we shall meet.

The political world, at least our part of it, is surely moved *topsy turvy*. What is to become of us and of our constitution? Can the wise men of the East answer the question? Those of the South perceive no difficulty. Allow a full range to state rights and state sovereignty, and, in their opinion, all will go well.

What think you of the late decision of our brother McClain in Tennessee? Does it accord exactly with his last opinion in the Cherokee case?

Farewell. With affectionate esteem, I am still & shall ever be
Yours truly.

J. MARSHALL.

The Hon'ble Mr Justice Story. Cambridge, Massachusetts.

RICHMOND, Dec^r 3^d, 1834.

MY DEAR SIR, — I am so accustomed to rely on you for aid when I need it that you must not be surprised at the present application. I trust, however, that it will not give you much trouble.

You will perceive in the 2 v. of the Life of Washington, 2^d ed., p. 307-8, an account of the defeat of Harden. It is stated that the battle was fought on the St. Joseph. I have received a letter from a gentleman in Chillicothe which gives probability to the opinion that it was really fought on Paint Creek, a stream which empties into the Scioto not far from Chillicothe. Will you have the goodness at your leisure to make some enquiries of Mr Sparks, and learn whether the letter to General Washington giving an account of this battle states it to have been fought on the St. Joseph or on Paint Creek. You need not hurry yourself on this subject. The information will be in full time when I meet you in Washington, where I purpose to be as usual in January.

I perceive you have been much employed in dispatching a batch of pirates. I trust I may congratulate you on having finished it to your own satisfaction. My circuit duties are not arduous, and will terminate this week.

You will perceive that our House of Delegates has re-elected their Jackson Speaker. This, however, is not absolutely a test of the strength of parties. The decisive battle will be fought on the election of a Senator. Both parties appear to be sanguine. The administration has undoubtedly a majority in the Senate, — the opposition in the House of Delegates. We are insane on the subject of the Bank. Its friends, who are not numerous, dare not, a few excepted, to avow themselves. You will perceive by the message of our Governor that he is a complete nullifier in the Georgia sense of the term.

I conjecture from symptoms in the papers that Mr Van Buren gains strength in Virginia. This opinion is founded on the fact that the papers in his interest did not for a long time allude to him as their candidate. They emptied their cup of malignant calumny on every other person who was named as a candidate, hoping by the destruction of others to sustain him. They now begin to bring him forward. This shows that in their opinion he is stronger than he was.

I anticipate with much pleasure our meeting at Washington. It is among the most painful of the emotions excited by the prospect of leaving public life, an event which though not intended to be immediate cannot be very distant, that I shall part forever from friends most dear to me.

I am, my dear Sir, with true and affectionate esteem,

Your

J. MARSHALL.

Remarks were also made during the meeting by Messrs. BARRETT WENDELL, WILLIAM R. THAYER, CHARLES C. SMITH, EDWARD E. HALE, A. LAWRENCE LOWELL, HENRY W. HAYNES, and the PRESIDENT.



Geo. O. Shattuck

M E M O I R
OF
GEORGE O. SHATTUCK, LL.B.

BY O. W. HOLMES.

GEORGE OTIS SHATTUCK was born at Andover West Parish, Massachusetts, May 2, 1829, on the farm which had been owned by his family since David Abbot, his great-great-grandfather, settled there in 1725 and reclaimed his fields from the wilderness.

The granddaughter of this David Abbot married Joseph Shattuck in 1790. He was a soldier in the Revolutionary War; wintered at Valley Forge, and with other returning soldiers fell ill of small-pox in Boston on his way home. He arrived to find that his father had died in his absence, and he never returned to the army. His "love and duty" kept him at home to care for his "honored mother" and her children.

Joseph Shattuck, his son, the fourth of that name, married Hannah Bailey in 1826. George Otis was the second of their four sons. They lived on the old farm, whose pleasant, fertile fields slope gently back to the Merrimac River. On the opposite side of the highway was, until a few months ago, an old well, the only relic of the house David Abbot built; thence the fields stretch back into pastures and fine woodlands. It is a region of smiling peace; and here Mr. Shattuck spent his boyhood, and under the excellent training of New England home and church and school were founded his integrity of character, his industrious habits, and his vigorous constitution. Here too he became a strong swimmer, a good horseman, a practical farmer, and to some extent a woodsman, familiar with trees and birds and the aspects and signs of the sky.

His intellectual ability early became evident and determined his career. He always retained his love of farm life

and understood its processes, and his interest in these afforded him healthful recreation in his later laborious years. These words, spoken of him by a dear and close friend before the Bar Association, touch this point: "His fondness for farming was a noticeable feature. I think he had a sympathy with the great quiet forces which he saw at work, and a sympathy with the animals of the farm; also the visible return which the earth makes for labor, pleased him. It made him feel that he was adding to the world's stores."

Hannah Bailey, his mother, was a woman of strong character and liberal mind, generous and self-sacrificing. She had been a teacher before her marriage, and earnestly desired the best education possible for her children.

Her family also served their country and to their own sad loss. Her grandfather, Samuel Bailey, was killed at Bunker Hill. Her father, then a boy of sixteen, went also to the battle and returned unhurt.

Joseph Shattuck was upright and honorable, eminently calm and self-possessed by temperament, but a man of great force. He was held in high esteem by his fellow townsmen, whom he represented in the Legislature in 1838 and 1839, and was one of the selectmen of Andover for sixteen years.

Thus, both Mr. Shattuck's parents and their families were of the best New England stock. They fulfilled faithfully the simple duties of their lives and walked uprightly before God and man.

Mr. Shattuck was fitted for college at Phillips Andover Academy, and began to teach school in the vacations when sixteen years old. He entered Harvard College in 1847 and was graduated in 1851. He held the regard and respect of his classmates for his friendly disposition, and, as one of them has phrased it, "his upright conduct, which was such that none of us will ever forget it." The late Professor Dunbar spoke of him as one of the most prominent men of his class, and related that he was chosen President by a unanimous vote, when, as was usual in those days, there was a division in the class and a stormy class meeting was expected. Mr. Shattuck presided at this meeting with great skill. He was able to quell instantly every sign of disturbance, and the meeting was one of the most orderly that had been held for a decade.

Throughout his college course, as in his school days and

in later life, he was earnest, faithful, conscientious, and high-minded. He was always interested in religious subjects and convinced of their importance. All the ministries of the church appealed to him from his youth up. He took pleasure in reading and learning hymns and poems expressive of religious feeling. The simple verses of Whittier and certain poems of Browning, Emerson, and Tennyson were dear to him; and when years of stress and anxiety came he was often visibly calmed and refreshed by a half hour with his favorite books.

Edward Everett was President of Harvard College in 1847, and was succeeded by Jared Sparks before Mr. Shattuck was graduated; but the man whose influence appears to have been greatest over him at that time was Dr. James Walker, Professor of Moral Philosophy. They became friends and so remained during Dr. Walker's life; and Mr. Shattuck never ceased to the end of his own life to recall from time to time words of wisdom of his old friend. On the one side was a reverential attachment and appreciation; on the other the kindly interest and regard of an old man for one younger; and on both sides entire confidence and respect. Dr. Walker made him the executor of his will.

Mr. Shattuck taught at Mr. Stephen M. Weld's school in Jamaica Plain the first year after graduation, and entered the Harvard Law School in 1852. He was at that time Proctor in the north entry of Stoughton, in which part of the building the Hasty Pudding Club then had its rooms, and, although a Proctor, he was very popular with the undergraduates,—so much so, in fact, that the Hasty Pudding Club elected him an honorary member. During his two years' course at the law school his friends were among the best of the young men then in Cambridge,—men of the highest type, who all attained distinction. Of them were C. C. Langdell, Chauncey Wright, Darwin E. Ware, James B. Thayer, Charles F. Dunbar, W. R. Ware, Charles W. Eliot.

His interest in William Gibbons, a brilliant youth who died suddenly in college in 1854, gained for him the valuable friendship of his mother, Mrs. Gibbons, of New York. No one could have exerted a finer influence over the mind of a young man quick to feel and admire high qualities in his friend than this noble woman.

Mr. Shattuck entered the office of Mr. Charles G. Loring as a student in 1854. Perhaps the remarkable enthusiasm with which he took up his cases may be, in a degree, ascribed to the influence of Mr. Loring at that time. He used to say that "Loring was a man who always believed in his cases," and this exactly suited his own temperament. His devotion to a client and his cause was always absorbing, and it was quite certain that they would receive the full benefit of his powers. He was admitted to the Bar in 1855, and at once formed a partnership with Mr. J. Randolph Coolidge. This, however, was soon dissolved, and in 1856 he became the junior partner of Hon. Peleg W. Chandler, who thus early recognized his ability and greeted every subsequent success of his with generous interest. The encouragement and companionship of a man so strong and able could not have been without marked effect on Mr. Shattuck's career. Their friendship continued to the end of Mr. Chandler's life.

In 1870 Mr. Shattuck and Mr. William A. Munroe entered into a partnership which was to last while Mr. Shattuck lived, with increasing love and respect on the part of both. The present Chief Justice of the Supreme Court was a member of this firm for nearly ten years, until 1882, when he was appointed Associate Justice of the Supreme Court. This was an occasion of the sincerest satisfaction to Mr. Shattuck, touched indeed with regret at the loss to himself and his office; but no separation could diminish the affection with which he always regarded his "Junior Partner."

Mr. Shattuck was married in 1857 to Emily, daughter of Charles and Susan (Sprague) Copeland of Roxbury, and took up his residence in Boston. He at that time became a member of the First Church, of which Rev. Rufus Ellis was minister. As in everything else to which he had once given allegiance, so he never failed in this connection, and for the remaining forty years of his life he was a constant attendant, a generous friend, and a wise counsellor in the affairs of the Church.

About the year 1875 he became strongly interested in the preservation of the Old South Church, and he bestowed much time and labor upon it. An able speech before the Legislature in the winter of 1875 or 1876 was of distinct service to the cause. He had the privilege in this matter of working in

concert with Mrs. Mary Hemenway, whose enthusiasm stimulated his own in the care of the old building.

His love for Harvard College always grew and strengthened. He was for twenty-one years a member of the Board of Overseers, and was deeply interested in the administration of the University and in the appointment of Charles W. Eliot as President. "For thirty years his sagacious advice and well-directed efforts were recognized and regarded as of the highest value by those who controlled the management of the University."¹

In his forty years of life in Boston he became a member of numerous clubs and societies, and lent generous aid to charities and institutions and literary enterprises. He was for more than thirty years Trustee of the State Library and of the old Boston Library. The monthly meetings of the twelve trustees of the latter and of the Law Club afforded great pleasure to his eminently social disposition, and the good talk at these tables instructed and stimulated him. The Wednesday Evening Century Club also gave him many a pleasant hour, for he may be written "as one who loved his fellow men."

How abundantly this love was returned by men younger than himself, for whom his interest was one of the happy conditions of his life, and for whom his encouragement was unfailing, was shown by letters received from them after his death,—letters spontaneous, sincere, and grateful.

The summer place at Mattapoisett was a source of joy and health to Mr. Shattuck; and to others also, he liked to think. Nothing made him happier than to fill his yacht with a cheerful company and sail to the adjacent islands, to New Bedford, or Gay Head; or farther still, to Nantucket or Provincetown. What shining days were those when a favoring wind blew and the waves danced—or rushed—before the prow! He loved to subdue the stubborn soil of his rough acres and to cut paths through the sturdy and tangled woods. Nor did he weary of the sandy roads of that monotonous but engaging shore, or ever fail to be interested in the welfare of the town and its people.

But of all his social pleasures the meetings of a Club made up of his early friends gave him most enjoyment. This Club he loved,—“Our Club,” as the members called it.

Mr. Shattuck went to Europe for the first time in 1868. In

¹ John C. Ropes.

1880, when his health required rest and change, he spent a year abroad and came home strong and well and full of courage. He had recognized, as if by instinct, what was finest in cities, in picture galleries, in cathedrals, in natural scenery, and had studied the language and politics of every country he visited.

He travelled also extensively in his own country, at the West, and knew the Pacific Coast from San Diego to Vancouver. He talked everywhere with people, with men of all estates, and they were glad to talk with him. He believed thoroughly in a great future for California, and this perhaps led to troubles and embarrassments in his later years. In this connection it was said by one who knew him well: "He had the defects of his qualities, as everybody has who has any quality. It was the defect of his noble quality of loyalty that made him cling to and engage more deeply in enterprises in which his fortunes and his sympathies were enlisted, in spite of changed surroundings and prospects. When the blow fell, he bore it without flinching; he took up his work more persistently than ever and never put off his harness till the end."¹

He was offered the position of Judge of one of the Federal Courts and also of the Supreme Court of Massachusetts, but he preferred the practice of the law, in which he delighted. His profession was full of intense interest for him.

"From the time when as a student he diligently compiled and wrote notes to 'Parsons on Contracts' to the time of his death, he kept constantly abreast of the learning of the day, and stored it in due and logical order in his memory, so that he could produce it at once when called upon. He had a very clear mind and a large proportion of what is called common sense, that is, judgment applied to the common affairs of life. His power of work seemed inexhaustible and was given to all his cases, whether large or small. Altogether there were few lawyers of his time who, in all branches of practice were worthy to be called his superiors."²

Nor was he without interest in public affairs; over political questions indeed he was sometimes almost painfully interested and excited, and, though staunch to his party, was able to

¹ George Putnam, before the Bar Association.

² Judge John Lowell.

criticise its action in an unbiassed manner. He early reached eminence; he was retained in great and important cases, and became easily recognized as a leader at the Bar; and all the time was building up the weighty character, compact of integrity and earnestness, strength and high principle; inspired by an honorable ambition and tempered by the kindliness of a large and very human heart, which was held in honor by the community in which he lived and worked.

A few months before his death he was elected President of the Bar Association of Boston, an honor which was very grateful to him. But his health soon failed so rapidly that he never presided at a meeting of the Association. He died February 23, 1897, leaving one child only, Susan, the wife of Dr. Arthur Tracy Cabot.

The foregoing memoir was prepared by another hand than mine, but it breathes such piety and love that it seems to me that I best do my duty to the Society by presenting it untouched, except by the addition of a few words of estimate.

Young men in college or at the beginning of their professional life are very apt to encounter some able man a few years older than themselves who is so near to their questions and difficulties and yet so much in advance that he counts for a great deal in the shaping of their views or even of their lives. Mr. Shattuck played that part for me. Whether the fact has influenced my opinion I must leave others to judge, but I think that Mr. Shattuck in his prime was the ablest advocate I ever knew. I do not believe that I ever knew his equal in all-round capacity to have his way in a case, taking into account all the honorable things that sooner or later may have to be done before success is reached. He was profound and far-reaching in plan. He was vehement in attack and stubborn in defence. He was fertile in resource and very quick in seeing all the bearings of a fact or of a piece of testimony, a matter in which most men of weighty ability are slow. He was a great cross-examiner. He was a speaker who brought himself home to juries, and who was a master in the argument of questions of law.

He was a true and generous friend, and tales might be told to show his even heroic devotion, were it not better to respect

the delicacy which led him never to let such things be known. He was no less liberal of himself down to the very sources of life in matters of public and semi-public interest which seemed to him to need the support of his Atlantean shoulders. In short, his was so voluminous a nature, in intellect and character and heart, that if at times I have felt an inherited apprehension that in our strenuous air the temperaments of men were in danger of attenuation, when I think of him I realize that New England still can produce a man adequate in brain and muscle and nerve to all great issues, and memory restores my courage as it also recalls an unforgotten love.